“Winning” Mediation

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CHAPTER 44
MEDIATION ALTERNATIVES TO JUDICIAL ACTION

44.1011 Definitions.—As used in this chapter:

(1) "Arbitration" means a process whereby a neutral third person or panel, called an arbitrator or arbitration panel, considers the facts and arguments presented by the parties and renders a decision which may be binding or nonbinding as provided in this chapter.

(2) "Mediation" means a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decisionmaking authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives. "Mediation" includes:

(a) "Appellate court mediation," which means mediation that occurs during the pendency of an appeal of a civil case.

(b) "Circuit court mediation," which means mediation of civil cases, other than family matters, in circuit court. If a party is represented by counsel, the counsel of record must appear unless stipulated to by the parties or otherwise ordered by the court.

(c) "County court mediation," which means mediation of civil cases within the jurisdiction of county courts, including small claims. Negotiations in county court mediation are primarily conducted by the parties. Counsel for each party may participate. However, presence of counsel is not required.

(d) "Family mediation" which means mediation of family matters, including married and unmarried persons, before and after judgments involving dissolution of marriage; property division; shared or sole parental responsibility; or child support, custody, and visitation involving emotional or financial considerations not usually present in other circuit civil cases. Negotiations in family mediation are primarily conducted by the parties. Counsel for each party may attend the mediation conference and privately communicate with their clients. However, presence of counsel is not required, and, in the discretion of the mediator, and with the agreement of the parties, mediation may proceed in the absence of counsel unless otherwise ordered by the court.

(e) "Dependency or in need of services mediation," which means mediation of dependency, child in need of services, or family in need of services matters. Negotiations in dependency or in need of services mediation are primarily conducted by the parties. Counsel for each party may attend the mediation conference and privately communicate with their clients. However, presence of counsel is not required and, in the discretion of the mediator and with the agreement of the parties, mediation may proceed in the absence of counsel unless otherwise ordered by the court.

History.—s. 1, ch. 87-173; s. 1, ch. 90-188; s. 43, ch. 94-164; s. 54, ch. 95-280.

Note.—Former s. 44.301.

44.102 Court-ordered mediation.—

(1) Court-ordered mediation shall be conducted according to rules of practice and procedure adopted by the Supreme Court.

(2) A court, under rules adopted by the Supreme Court:

(a) Must, upon request of one party, refer to mediation any filed civil action for monetary damages, provided the requesting party is willing and able to pay the costs of the mediation or the costs can be equitably divided between the parties, unless:

1. The action is a landlord and tenant dispute that does not include a claim for personal injury.
2. The action is filed for the purpose of collecting a debt.
3. The action is a claim of medical malpractice.
4. The action is governed by the Florida Small Claims Rules.
5. The court determines that the action is proper for referral to nonbinding arbitration under this chapter.
6. The parties have agreed to binding arbitration.
7. The parties have agreed to an expedited trial pursuant to s. 45.075.
8. The parties have agreed to voluntary trial resolution pursuant to s. 44.104.

(b) May refer to mediation all or any part of a filed civil action for which mediation is not required under this section.

(c) In circuits in which a family mediation program has been established and upon a court finding of a dispute, shall refer to mediation all or part of custody, visitation, or other parental responsibility issues as defined in s. 61.13. Upon motion or request of a party, a court shall not refer any case to mediation if it finds there has been a history of domestic violence that would compromise the mediation process.

(d) In circuits in which a dependency or in need of services mediation program has been established, may refer to mediation all or any portion of a matter relating to dependency or to a child in need of services or a family in need of services.

(3) All written communications in a mediation proceeding, other than an executed settlement agreement, shall be exempt from the requirements of chapter 119.

(4) The chief judge of each judicial circuit shall maintain a list of mediators who have been certified by the Supreme Court and who have registered for appointment in that circuit.

(a) Whenever possible, qualified individuals who have volunteered their time to serve as mediators shall be appointed. If a mediation program is funded pursuant to s. 44.108, volunteer mediators shall be entitled to reimbursement pursuant to s. 112.061 for all actual expenses necessitated by service as a mediator.

(b) Nonvolunteer mediators shall be compensated according to rules adopted by the Supreme Court. If a mediation program is funded pursuant to s. 44.108, a mediator may be compensated by the county or by the parties.

(5)(a) When an action is referred to mediation by court order, the time periods for responding to an offer of settlement pursuant to s. 45.061, or to an offer or demand for judgment pursuant to s. 768.79, respectively, shall be tolled until:

1. An impasse has been declared by the mediator; or
2. The mediator has reported to the court that no agreement was reached.

(b) Sections 45.061 and 768.79 notwithstanding, an offer of settlement or an offer or demand for judgment may be made at any time after an impasse has been declared by the mediator, or the mediator has reported that no agreement was reached. An offer is deemed rejected as of commencement of trial.

History.—s. 2, ch. 87-173; s. 2, ch. 89-31; s. 2, ch. 90-188; s. 2, ch. 93-161; s. 10, ch. 94-134; s. 10, ch. 94-135; s. 44, ch. 94-164; s. 18, ch. 96-406; s. 2, ch. 97-155; s. 2, ch. 99-225; s. 2, ch. 2002-65; s. 1, ch. 2004-291; s. 31, ch. 2005-236.

Note.—Former s. 44.302.

44.103 Court-ordered, nonbinding arbitration.—

(1) Court-ordered, nonbinding arbitration shall be conducted according to the rules of practice and procedure adopted by the Supreme Court.

(2) A court, pursuant to rules adopted by the Supreme Court, may refer any contested civil action filed in a circuit or county court to nonbinding arbitration.

(3) Arbitrators shall be selected and compensated in accordance with rules adopted by the Supreme Court. Arbitrators shall be compensated by the parties, or, upon a finding by the court that a party is indigent, an arbitrator may be partially or fully compensated from state funds according to the party's present ability to pay. At no time may an arbitrator charge more than $1,500 per diem, unless the parties agree otherwise. Prior to approving the use of state funds to reimburse an arbitrator, the court must ensure that the party reimburses the portion of the total cost that the party is immediately able to pay and that the party has agreed to a payment plan established by the clerk of the court that will fully reimburse the state for the balance of all state costs for both the arbitrator and any costs of administering the payment plan and any collection efforts that may be necessary in the future. Whenever possible, qualified individuals who have volunteered their time to serve as arbitrators shall be appointed. If an arbitration program is funded pursuant to s. 44.108, volunteer arbitrators shall be entitled to be reimbursed pursuant to s. 112.061 for all actual expenses necessitated by service as an arbitrator.

(4) An arbitrator or, in the case of a panel, the chief arbitrator, shall have such power to administer oaths or affirmations and to conduct the proceedings as the rules of court shall provide. The hearing shall be conducted informally. Presentation of testimony and evidence shall be kept to a minimum, and matters shall be presented to the arbitrators primarily through the statements and arguments of counsel. Any party to the arbitration may petition the court in the underlying action, for good cause shown, to authorize the arbitrator to issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence at the arbitration and may petition the court for orders compelling such attendance and production at the arbitration. Subpoenas shall be served and shall be enforceable in the manner provided by law.

(5) 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.

(6) Upon motion made by either party within 30 days after entry of judgment, the court may assess costs against the party requesting a trial de novo, including arbitration costs, court costs, reasonable attorney's fees, and other reasonable costs such as investigation expenses and expenses for expert or other testimony which were incurred after the arbitration hearing and continuing through the trial of the case in accordance with the guidelines for taxation of costs as adopted by the Supreme Court. Such costs may be assessed if:

(a) The plaintiff, having filed for a trial de novo, obtains a judgment at trial which is at least 25 percent less than the arbitration award. In such instance, the costs and attorney's fees pursuant to this section shall be set off against the award. When the costs and attorney's fees pursuant to this section total more than the amount of the judgment, the court shall enter judgment for the defendant against the plaintiff for the amount of the costs and attorney's fees, less the amount of the award to the plaintiff. For purposes of a determination under this paragraph, the term "judgment" means the amount of the net judgment entered, plus all taxable costs pursuant to the guidelines for taxation of costs as adopted by the Supreme Court, plus any postarbitration collateral source payments received or due as of the date of the judgment, and plus any postarbitration settlement amounts by which the verdict was reduced; or

(b) The defendant, having filed for a trial de novo, has a judgment entered against the defendant which is at least 25 percent more than the arbitration award. For purposes of a determination under this paragraph, the term "judgment" means the amount of the net judgment entered, plus any postarbitration settlement amounts by which the verdict was reduced.

History.—s. 3, ch. 87-173; s. 3, ch. 89-31; s. 3, ch. 90-188; s. 3, ch. 93-161; s. 43, ch. 2004-265; s. 32, ch. 2005-236; s. 1, ch. 2007-206.

Note.—Former s. 44.303.

44.104 Voluntary binding arbitration and voluntary trial resolution.—

(1) Two or more opposing parties who are involved in a civil dispute may agree in writing to submit the controversy to voluntary binding arbitration, or voluntary trial resolution, 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 in voluntary binding arbitration for a method for appointing of one or more arbitrators, or which provides in voluntary trial resolution a method for appointing a member of The Florida Bar in good standing for more than 5 years to act as trial resolution judge, the court shall proceed with the appointment as prescribed. However, in voluntary binding arbitration at least one of the arbitrators, who shall serve as the chief arbitrator, shall meet the qualifications and training requirements adopted pursuant to s. 44.106. 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, or the trial resolution judge, as the case requires.

(3) The arbitrators or trial resolution judge shall be compensated by the parties according to their agreement.

(4) Within 10 days after the submission of the request for binding arbitration, or voluntary trial resolution, the court shall provide for the appointment of the arbitrator or arbitrators, or trial resolution judge, as the case requires. Once appointed, the arbitrators or trial resolution judge shall notify the parties of the time and place for the hearing.

(5) Application for voluntary binding arbitration or voluntary trial resolution 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 and the records of the applications for voluntary trial resolution from all other civil actions.

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

(7) The chief arbitrator or trial resolution judge may administer oaths or affirmations and conduct the proceedings as the rules of court shall provide. At the request of any party, the chief arbitrator or trial resolution judge 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) A voluntary binding arbitration hearing shall be conducted by all of the arbitrators, but a majority may determine any question and render a final decision. A trial resolution judge shall conduct a voluntary trial resolution hearing. The trial resolution judge 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 of a voluntary binding arbitration decision 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.

(11) Any party may enforce a final decision rendered in a voluntary trial by filing a petition for final judgment in the circuit court in the circuit in which the voluntary trial took place. Upon entry of final judgment by the circuit court, any party may appeal to the appropriate appellate court. Factual findings determined in the voluntary trial are not subject to appeal.

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

(13) 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.

(14) This section shall not apply to any dispute involving child custody, visitation, or child support, or to any dispute which involves the rights of a third party not a party to the arbitration or voluntary trial resolution when the third party would be an indispensable party if the dispute were resolved in court or when the third party notifies the chief arbitrator or the trial resolution judge that the third party would be a proper party if the dispute were resolved in court, that the third party intends to intervene in the action in court, and that the third party does not agree to proceed under this section.

History.—s. 4, ch. 87-173; s. 4, ch. 89-31; s. 4, ch. 90-188; s. 3, ch. 99-225.
Note.—Former s. 44.304.

44.106 Standards and procedures for mediators and arbitrators; fees.—

(1) The Supreme Court shall establish minimum standards and procedures for qualifications, certification, professional conduct, discipline, and training for mediators and arbitrators who are appointed pursuant to this chapter. The Supreme Court is authorized to set fees to be charged to applicants for certification and renewal of certification. The revenues generated from these fees shall be used to offset the costs of administration of the certification process. The Supreme Court may appoint or employ such personnel as are necessary to assist the court in exercising its powers and performing its duties under this chapter.

(2) An applicant for certification as a mediator shall undergo a security background investigation, which includes, but is not limited to, submitting a full set of fingerprints to the Department of Law Enforcement or to a vendor, entity, or agency authorized by s. 943.053. The vendor, entity, or agency shall forward the fingerprints to the department for state processing, and the department shall forward the fingerprints to the Federal Bureau of Investigation for national processing. Any vendor fee and state and federal processing fees shall be borne by the applicant. For records provided to a person or entity other than those excepted therein, the cost for state fingerprint processing is the fee authorized in s. 943.053(3)(e).

History.—s. 6, ch. 87-173; s. 6, ch. 90-188; s. 2, ch. 2019-98.
Note.—Former s. 44.306.

44.107 Immunity for arbitrators, mediators, and mediator trainees.—

(1) Arbitrators serving under s. 44.103 or s. 44.104, mediators serving under s. 44.102, and trainees fulfilling the mentorship requirements for certification by the Supreme Court as a mediator shall have judicial immunity in the same manner and to the same extent as a judge.

(2) A person serving as a mediator in any noncourt-ordered mediation shall have immunity from liability arising from the performance of that person's duties while acting within the scope of the mediation function if such mediation is:

(a) Required by statute or agency rule or order;

(b) Conducted under ss. 44.401-44.406 by express agreement of the mediation parties; or

(c) Facilitated by a mediator certified by the Supreme Court, unless the mediation parties expressly agree not to be bound by ss. 44.401-44.406.

The mediator does not have immunity if he or she acts in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(3) A person serving under s. 44.106 to assist the Supreme Court in performing its disciplinary function shall have absolute immunity from liability arising from the performance of that person's duties while acting within the scope of that person's appointed function.

History.—s. 5, ch. 89-31; s. 7, ch. 90-188; s. 1, ch. 95-421; s. 2, ch. 2004-291.
Note.—Former s. 44.307.

44.108 Funding of mediation and arbitration.—

(1) Mediation and arbitration should be accessible to all parties regardless of financial status. A filing fee of $1 is levied on all proceedings in the circuit or county courts to fund mediation and arbitration services which are the responsibility of the Supreme Court pursuant to the provisions of s. 44.106. The clerk of the court shall forward the moneys collected to the Department of Revenue for deposit in the State Courts Revenue Trust Fund.

(2) When court-ordered mediation services are provided by a circuit court's mediation program, the following fees, unless otherwise established in the General Appropriations Act, shall be collected by the clerk of court:

(a) One-hundred twenty dollars per person per scheduled session in family mediation when the parties' combined income is greater than $50,000, but less than $100,000 per year;

(b) Sixty dollars per person per scheduled session in family mediation when the parties' combined income is less than $50,000; or

(c) Sixty dollars per person per scheduled session in county court cases involving an amount in controversy not exceeding $15,000.

No mediation fees shall be assessed under this subsection in residential eviction cases, against a party found to be indigent, or for any small claims action. Fees collected by the clerk of court pursuant to this section shall be remitted to the Department of Revenue for deposit into the State Courts Revenue Trust Fund to fund court-ordered mediation. The clerk of court may deduct $1 per fee assessment for processing this fee. The clerk of the court shall submit to the chief judge of the circuit and to the Office of the State Courts Administrator, no later than 30 days after the end of each quarter of the fiscal year, a report specifying the amount of funds collected and remitted to the State Courts Revenue Trust Fund under this section and any other section during the previous quarter of the fiscal year. In addition to identifying the total aggregate collections and remissions from all statutory sources, the report must identify collections and remissions by each statutory source.

History.—s. 6, ch. 89-31; s. 8, ch. 90-188; s. 6, ch. 91-152; s. 8, ch. 2001-122; s. 12, ch. 2001-380; s. 66, ch. 2003-402; s. 44, ch. 2004-265; s. 33, ch. 2005-236; s. 24, ch. 2008-111; s. 12, ch. 2010-153; s. 4, ch. 2011-133; s. 11, ch. 2019-58.

Note.—Former s. 44.308.

44.201 Citizen Dispute Settlement Centers; establishment; operation; confidentiality.—

(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 chair 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 commissioners 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 is exempt from the provisions of s. 119.07(1).

(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 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; s. 16, ch. 90-360; s. 263, ch. 95-147; s. 19, ch. 96-406; s. 3, ch. 2004-291.

44.401 Mediation Confidentiality and Privilege Act.—Sections 44.401-44.406 may be known by the popular name the "Mediation Confidentiality and Privilege Act."

History.—s. 4, ch. 2004-291.

44.402 Scope.—

(1) Except as otherwise provided, ss. 44.401-44.406 apply to any mediation:

(a) Required by statute, court rule, agency rule or order, oral or written case-specific court order, or court administrative order;

(b) Conducted under ss. 44.401-44.406 by express agreement of the mediation parties; or

(c) Facilitated by a mediator certified by the Supreme Court, unless the mediation parties expressly agree not to be bound by ss. 44.401-44.406.

(2) Notwithstanding any other provision, the mediation parties may agree in writing that any or all of s. 44.405(1), s. 44.405(2), or s. 44.406 will not apply to all or part of a mediation proceeding.

History.—s. 4, ch. 2004-291.

44.403 Mediation Confidentiality and Privilege Act; definitions.—As used in ss. 44.401-44.406, the term:

(1) "Mediation communication" means an oral or written statement, or nonverbal conduct intended to make an assertion, by or to a mediation participant made during the course of a mediation, or prior to mediation if made in furtherance of a mediation. The commission of a crime during a mediation is not a mediation communication.

(2) "Mediation participant" means a mediation party or a person who attends a mediation in person or by telephone, video conference, or other electronic means.

(3) "Mediation party" or "party" means a person participating directly, or through a designated representative, in a mediation and a person who:

(a) Is a named party;

(b) Is a real party in interest; or

(c) Would be a named party or real party in interest if an action relating to the subject matter of the mediation were brought in a court of law.

(4) "Mediator" means a neutral, impartial third person who facilitates the mediation process. The mediator's role is to reduce obstacles to communication, assist in identifying issues, explore alternatives, and otherwise facilitate voluntary agreements to resolve disputes, without prescribing what the resolution must be.

(5) "Subsequent proceeding" means an adjudicative process that follows a mediation, including related discovery.

History.—s. 4, ch. 2004-291.

44.404 Mediation; duration.—

(1) A court-ordered mediation begins when an order is issued by the court and ends when:

(a) A partial or complete settlement agreement, intended to resolve the dispute and end the mediation, is signed by the parties and, if required by law, approved by the court;

(b) The mediator declares an impasse by reporting to the court or the parties the lack of an agreement;

(c) The mediation is terminated by court order, court rule, or applicable law; or

(d) The mediation is terminated, after party compliance with the court order to appear at mediation, by:

1. Agreement of the parties; or

2. One party giving written notice to all other parties in a multiparty mediation that the one party is terminating its participation in the mediation. Under this circumstance, the termination is effective only for the withdrawing party.

(2) In all other mediations, the mediation begins when the parties agree to mediate or as required by agency rule, agency order, or statute, whichever occurs earlier, and ends when:

(a) A partial or complete settlement agreement, intended to resolve the dispute and end the mediation, is signed by the parties and, if required by law, approved by the court;

(b) The mediator declares an impasse to the parties;

(c) The mediation is terminated by court order, court rule, or applicable law; or

(d) The mediation is terminated by:

1. Agreement of the parties; or

2. One party giving notice to all other parties in a multiparty mediation that the one party is terminating its participation in the mediation. Under this circumstance, the termination is effective only for the withdrawing party.

History.—s. 4, ch. 2004-291.

44.405 Confidentiality; privilege; exceptions.—

(1) Except as provided in this section, all mediation communications shall be confidential. A mediation participant shall not disclose a mediation communication to a person other than another mediation participant or a participant's counsel. A violation of this section may be remedied as provided by s. 44.406. If the mediation is court ordered, a violation of this section may also subject the mediation participant to sanctions by the court, including, but not limited to, costs, attorney's fees, and mediator's fees.

(2) A mediation party has a privilege to refuse to testify and to prevent any other person from testifying in a subsequent proceeding regarding mediation communications.

(3) If, in a mediation involving more than two parties, a party gives written notice to the other parties that the party is terminating its participation in the mediation, the party giving notice shall have a privilege to refuse to testify and to prevent any other person from testifying in a subsequent proceeding regarding only those mediation communications that occurred prior to the delivery of the written notice of termination of mediation to the other parties.

(4)(a) Notwithstanding subsections (1) and (2), there is no confidentiality or privilege attached to a signed written agreement reached during a mediation, unless the parties agree otherwise, or for any mediation communication:

1. For which the confidentiality or privilege against disclosure has been waived by all parties;

2. That is willfully used to plan a crime, commit or attempt to commit a crime, conceal ongoing criminal activity, or threaten violence;

3. That requires a mandatory report pursuant to chapter 39 or chapter 415 solely for the purpose of making the mandatory report to the entity requiring the report;

4. Offered to report, prove, or disprove professional malpractice occurring during the mediation, solely for the purpose of the professional malpractice proceeding;

5. Offered for the limited purpose of establishing or refuting legally recognized grounds for voiding or reforming a settlement agreement reached during a mediation; or

6. Offered to report, prove, or disprove professional misconduct occurring during the mediation, solely for the internal use of the body conducting the investigation of the conduct.

(b) A mediation communication disclosed under any provision of subparagraph (a)3., subparagraph (a)4., subparagraph (a)5., or subparagraph (a)6. remains confidential and is not discoverable or admissible for any other purpose, unless otherwise permitted by this section.

(5) Information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery by reason of its disclosure or use in mediation.

(6) A party that discloses or makes a representation about a privileged mediation communication waives that privilege, but only to the extent necessary for the other party to respond to the disclosure or representation.

History.—s. 4, ch. 2004-291.

44.406 Confidentiality; civil remedies.—

(1) Any mediation participant who knowingly and willfully discloses a mediation communication in violation of s. 44.405 shall, upon application by any party to a court of competent jurisdiction, be subject to remedies, including:

(a) Equitable relief.

(b) Compensatory damages.

(c) Attorney's fees, mediator's fees, and costs incurred in the mediation proceeding.

(d) Reasonable attorney's fees and costs incurred in the application for remedies under this section.

(2) Notwithstanding any other law, an application for relief filed under this section may not be commenced later than 2 years after the date on which the party had a reasonable opportunity to discover the breach of confidentiality, but in no case more than 4 years after the date of the breach.

(3) A mediation participant shall not be subject to a civil action under this section for lawful compliance with the provisions of s. 119.07.

History.—s. 4, ch. 2004-291.

44.407 Elder-focused dispute resolution process.—

(1) LEGISLATIVE FINDINGS.—The Legislature finds that:

(a) Denying an elder a voice in decisions regarding himself or herself may negatively affect the elder's health and well-being, as well as deprive the elder of his or her legal rights. Even if an elder is losing capacity to make major decisions for himself or herself, the elder is still entitled to the dignity of having his or her voice heard.

(b) In conjunction with proceedings in court, it is in the best interest of an elder, his or her family members, and legally recognized decisionmakers to have access to a nonadversarial process to resolve disputes relating to the elder which focuses on the elder's wants, needs, and best interests. Such a process will protect and preserve the elder's exercisable rights.

(c) By recognizing that every elder, including those whose capacity is being questioned, has unique needs, interests, and differing abilities, the Legislature intends for this section to promote the public welfare by establishing a unique dispute resolution option to complement and enhance, not replace, other services, such as the provision of legal information or legal representation; financial advice; individual or family therapy; medical, psychological, or psychiatric evaluation; or mediation, specifically for issues related to the care and needs of elders. The Legislature intends that this section be liberally construed to accomplish these goals.

(2) DEFINITIONS.—As used in this section, the term:

(a) "Action," for purposes of using eldercaring coordination solely to address disputes regarding the care and safety of the elder, means a proceeding in which a party sought or seeks a judgment or order from the court to:

1. Determine if someone is or is not incapacitated pursuant to s. 744.331.
2. Appoint or remove a guardian or guardian advocate.
3. Review any actions of a guardian.
4. Execute an investigation pursuant to s. 415.104.
5. Review an agent's actions pursuant to s. 709.2116.
6. Review a proxy's decision pursuant to s. 765.105.
7. Enter an injunction for the protection of an elder under s. 825.1035.
8. Follow up on a complaint made to the Office of Public and Professional Guardians pursuant to s. 744.2004.
9. At the discretion of the presiding judge, address any other matters pending before the court which involve the care and safety of an elder.

The term does not include any action brought under chapters 732, 733, and 736.

(b) "Care and safety" means the condition of the elder's general physical, mental, emotional, psychological, and social well-being. The term does not include a determination of capacity by the court under s. 744.331(5) and (6). Unless the parties agree otherwise, the term does not include matters relating to the elder's estate planning; the elder's agent designations under chapter 709; the elder's surrogate designations under chapter 765; trusts in which the elder is a grantor, fiduciary, or beneficiary; or other similar financially focused matters.

(c) "Elder" means a person 60 years of age or older who is alleged to be suffering from the infirmities of aging as manifested by a physical, a mental, or an emotional dysfunction to the extent that the elder's ability to provide adequately for the protection or care of his or her own person or property is impaired.

(d) "Eldercaring coordination" means an elder-focused dispute resolution process during which an eldercaring coordinator assists an elder, legally authorized decisionmakers, and others who participate by court order or by invitation of the eldercaring coordinator in resolving disputes regarding the care and safety of an elder by:

1. Facilitating more effective communication and negotiation and the development of problem-solving skills.
2. Providing education about eldercare resources.
3. Facilitating the creation, modification, or implementation of an eldercaring plan and reassessing it as necessary to reach a resolution of ongoing disputes concerning the care and safety of the elder.
4. Making recommendations for the resolution of disputes concerning the care and safety of the elder.
5. With the prior approval of the parties to an action or of the court, making limited decisions within the scope of the court's order of referral.

(e) "Eldercaring coordination communication" means an oral or written statement, or nonverbal conduct intended to make an assertion, by, between, or among the parties, participants, or eldercaring coordinator made during the course of eldercaring coordination activity, or before an eldercaring coordination activity if made in furtherance of eldercaring

coordination. The term does not include statements made during eldercaring coordination which involve the commission of a crime; the intent to commit a crime; or ongoing abuse, exploitation, or neglect of a child or vulnerable adult.

(f) "Eldercaring coordinator" means an impartial third person who is appointed by the court or designated by the parties and who meets the requirements of subsection (5). The role of the eldercaring coordinator is to assist parties through eldercaring coordination in a manner that respects the elder's need for autonomy and safety.

(g) "Eldercaring plan" means a continually reassessed plan for the items, tasks, or responsibilities needed to provide for the care and safety of an elder which is modified throughout eldercaring coordination to meet the changing needs of the elder and which takes into consideration the preferences and wishes of the elder. The plan is not a legally enforceable document, but is meant for use by the parties and participants.

(h) "Good cause" means a finding that the eldercaring coordinator:

1. Is not fulfilling the duties and obligations of the position;
2. Has failed to comply with any order of the court, unless the order has been superseded on appeal;
3. Has conflicting or adverse interests that affect his or her impartiality;
4. Has engaged in circumstances that compromise the integrity of eldercaring coordination; or
5. Has had a disqualifying event occur.

The term does not include a party's disagreement with the eldercaring coordinator's methods or procedures.

(i) "Legally authorized decisionmaker" means an individual designated, either by the elder or by the court, pursuant to chapter 709, chapter 744, chapter 747, or chapter 765 who has the authority to make specific decisions on behalf of the elder who is the subject of an action.

(j) "Participant" means an individual who is not a party who joins eldercaring coordination by invitation of or with the consent of the eldercaring coordinator but who has not filed a pleading in the action from which the case was referred to eldercaring coordination.

(k) "Party" includes the elder who is the subject of an action and any other individual over whom the court has jurisdiction in the current case.

(3) REFERRAL.—

(a) Upon agreement of the parties to the action, the court's own motion, or the motion of a party to the action, the court may appoint an eldercaring coordinator and refer the parties to eldercaring coordination to assist in the resolution of disputes concerning the care and safety of the elder who is the subject of an action.

(b) The court may not refer a party who has a history of domestic violence or exploitation of an elderly person to eldercaring coordination unless the elder and other parties in the action consent to such referral.

1. The court shall offer each party an opportunity to consult with an attorney or a domestic violence advocate before accepting consent to such referral. The court shall determine whether each party has given his or her consent freely and voluntarily.

2. The court shall consider whether a party has committed an act of exploitation as defined in s. 415.102, exploitation of an elderly person or disabled adult as defined in s. 825.103(1), or domestic violence as defined in s. 741.28 against another party or any member of another party's family; engaged in a pattern of behaviors that exert power and control over another party and that may compromise another party's ability to negotiate a fair result; or engaged in behavior that leads another party to have reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence. The court shall consider and evaluate all relevant factors, including, but not limited to, the factors specified in s. 741.30(6)(b).

3. If a party has a history of domestic violence or exploitation of an elderly person, the court must order safeguards to protect the safety of the participants and the elder and the elder's property, including, but not limited to, adherence to all provisions of an injunction for protection or conditions of bail, probation, or a sentence arising from criminal proceedings.

(4) COURT APPOINTMENT.—

(a) A court appointment of an eldercaring coordinator is for a term of up to 2 years, and the court shall conduct review hearings intermittently to determine whether the term should be concluded or extended. Appointments conclude upon expiration of the term or upon discharge by the court, whichever occurs earlier.

(b) The order of appointment by the court shall define the scope of the eldercaring coordinator's authority under the appointment in the action, consistent with this section.

(c) The order shall specify that, notwithstanding the intermittent review hearings under paragraph (a), a party may move the court at any time during the period of appointment for termination of the appointment. Upon the filing of such a

motion, the court shall timely conduct a hearing to determine whether to terminate the appointment. Until the court has ruled on the motion, the eldercaring coordination process shall continue. In making the determination, the court shall consider at a minimum:

1. The efforts and progress of eldercaring coordination in the action to date;
2. The preference of the elder, if ascertainable; and
3. Whether continuation of the appointment is in the best interest of the elder.

(5) QUALIFICATIONS FOR ELDERCARING COORDINATORS.—

(a) The court shall appoint qualified eldercaring coordinators who:

1. Meet one of the following professional requirements:

a. Are licensed as a mental health professional under chapter 491 and hold at least a master's degree in the professional field of practice;

b. Are licensed as a psychologist under chapter 490;

c. Are licensed as a physician under chapter 458 or chapter 459;

d. Are licensed as a nurse under chapter 464 and hold at least a master's degree;

e. Are certified by the Florida Supreme Court as a family mediator and hold at least a master's degree;

f. Are a member in good standing of The Florida Bar; or

g. Are a professional guardian as defined in s. 744.102(17) and hold at least a master's degree.

2. Have completed all of the following:

a. Three years of postlicensure or postcertification practice;

b. A family mediation training program certified by the Florida Supreme Court; and

c. An eldercaring coordinator training program certified by the Florida Supreme Court. The training must total at least 44 hours and must include advanced tactics for dispute resolution of issues related to aging, illness, incapacity, or other vulnerabilities associated with elders, as well as elder, guardianship, and incapacity law and procedures and less restrictive alternatives to guardianship; phases of eldercaring coordination and the role and functions of an eldercaring coordinator; the elder's role within eldercaring coordination; family dynamics related to eldercaring coordination; eldercaring coordination skills and techniques; multicultural competence and its use in eldercaring coordination; at least 6 hours of the implications of elder abuse, neglect, and exploitation and other safety issues pertinent to the training; at least 4 hours of ethical considerations pertaining to the training; use of technology within eldercaring coordination; and court-specific eldercaring coordination procedures. Pending certification of a training program by the Florida Supreme Court, the eldercaring coordinator must document completion of training that satisfies the hours and the elements prescribed in this sub-subparagraph.

3. Have successfully passed a Level 2 background screening as provided in s. 435.04(2) and (3) or are exempt from disqualification under s. 435.07. The prospective eldercaring coordinator must submit a full set of fingerprints to the court or to a vendor, entity, or agency authorized by s. 943.053(13). The court, vendor, entity, or agency shall forward the fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing. The prospective eldercaring coordinator shall pay the fees for state and federal fingerprint processing. The state cost for fingerprint processing shall be as provided in s. 943.053(3)(e) for records provided to persons or entities other than those specified as exceptions therein.

4. Have not been a respondent in a final order granting an injunction for protection against domestic, dating, sexual, or repeat violence or stalking or exploitation of an elder or a disabled person.

5. Have met any additional qualifications the court may require to address issues specific to the parties.

(b) A qualified eldercaring coordinator must be in good standing or in clear and active status with all professional licensing authorities or certification boards to which the eldercaring coordinator is subject.

(6) DISQUALIFICATIONS AND REMOVAL OF ELDERCARING COORDINATORS.—

(a) An eldercaring coordinator must resign and immediately report to the court if he or she no longer meets the minimum qualifications or if any of the disqualifying circumstances occurs.

(b) The court shall remove an eldercaring coordinator upon the eldercaring coordinator's resignation or disqualification or upon a finding of good cause shown based on the court's own motion or a party's motion.

(c) Upon the court's own motion or upon a party's motion, the court may suspend the authority of an eldercaring coordinator pending a hearing on the motion for removal. Notice of hearing on removal must be timely served on the eldercaring coordinator and all parties.

(d) If a motion was made in bad faith, a court may, in addition to any other remedy authorized by law, award reasonable attorney fees and costs to a party or an eldercaring coordinator who successfully challenges a motion for removal.

(7) SUCCESSOR ELDERCARING COORDINATORS.—If an eldercaring coordinator resigns, is removed, or is suspended from an appointment, the court shall appoint a successor qualified eldercaring coordinator who is agreed to by all parties or, if the parties do not reach agreement on a successor, another qualified eldercaring coordinator to serve for the remainder of the original term.

(8) FEES AND COSTS.—The eldercaring coordinator's fees shall be paid in equal portions by each party referred to the eldercaring coordination process by the court. The order of referral shall specify which parties are ordered to the process and the percentage of the eldercaring coordinator's fees that each shall pay. The court may determine the allocation among the parties of fees and costs for eldercaring coordination and may make an unequal allocation based on the financial circumstances of each party, including the elder.

(a) A party who is asserting that he or she is unable to pay the eldercaring coordination fees and costs must complete a financial affidavit form approved by the presiding court. The court shall consider the party's financial circumstances, including income; assets; liabilities; financial obligations; and resources, including, but not limited to, whether the party can receive or is receiving trust benefits, whether the party is represented by and paying a lawyer, and whether paying the fees and costs of eldercaring coordination would create a substantial hardship.

(b) If a court finds that a party is indigent based upon the criteria prescribed in s. 57.082, the court may not order the party to eldercaring coordination unless funds are available to pay the indigent party's allocated portion of the eldercaring coordination fees and costs, which may include funds provided for that purpose by one or more nonindigent parties who consent to paying such fees and costs, or unless insurance coverage or reduced or pro bono services are available to pay all or a portion of such fees and costs. If financial assistance, such as health insurance or eldercaring coordination grants, is available, such assistance must be taken into consideration by the court in determining the financial abilities of the parties.

(9) CONFIDENTIALITY; PRIVILEGE; EXCEPTIONS.—

(a) Except as provided in this subsection, all eldercaring coordination communications are confidential. An eldercaring coordination party, participant, or eldercaring coordinator may not disclose an eldercaring coordination communication to a person other than another eldercaring coordination party, participant, or eldercaring coordinator, or a party's or participant's counsel. A violation of this subsection may be remedied as provided in paragraph (g). If the eldercaring coordination is court ordered, a violation of this subsection may also subject the eldercaring coordination participant to sanctions by the court, including, but not limited to, costs, attorney fees and costs, and eldercaring coordinator's fees and costs.

(b) An eldercaring coordination party, participant, or eldercaring coordinator has a privilege to refuse to testify and to prevent any other person from testifying in a subsequent proceeding regarding eldercaring coordination communications.

(c) Notwithstanding paragraphs (a) and (b), there is no confidentiality or privilege attached to any signed written agreement reached during eldercaring coordination, unless the parties agree otherwise, or to any eldercaring coordination communication:

1. Necessary to identify, authenticate, confirm, or deny a written and signed agreement entered into by the parties during eldercaring coordination.

2. Necessary to identify an issue for resolution by the court, including to support a motion to terminate eldercaring coordination, without otherwise disclosing communications made by any party, participant, or the eldercaring coordinator.

3. Limited to the subject of a party's compliance with the order of referral to eldercaring coordination, orders for psychological evaluation, court orders or health care provider recommendations for counseling, or court orders for substance abuse testing or treatment.

4. Necessary to determine the qualifications of an eldercaring coordinator or to determine the immunity and liability of an eldercaring coordinator who has acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard for the rights, safety, or property of the parties pursuant to subsection (11).

5. The parties agree may be disclosed or for which privilege against disclosure has been waived by all parties.

6. Made in the event the eldercaring coordinator needs to contact persons outside of the eldercaring coordination process to give or obtain information that furthers the eldercaring coordination process.

7. That requires a mandatory report pursuant to chapter 39 or chapter 415 solely for the purpose of making the mandatory report to the entity requiring the report.

8. Necessary to protect any person from future acts that would constitute domestic violence under chapter 741; child abuse, neglect, or abandonment under chapter 39; or abuse, neglect, or exploitation of an elderly or disabled adult under chapter 415 or chapter 825, or are necessary in an investigation conducted under s. 744.2004 or a review conducted under s. 744.368(5).

9. Offered to report, prove, or disprove professional misconduct alleged to have occurred during eldercaring coordination, solely for the internal use of the body conducting the investigation of such misconduct.

10. Offered to report, prove, or disprove professional malpractice alleged to have occurred during eldercaring coordination solely for the professional malpractice proceeding.

11. Willfully used to plan a crime, commit or attempt to commit a crime, conceal ongoing criminal activity, or threaten violence.

(d) An eldercaring coordination communication disclosed under any provision of subparagraph (c)1., subparagraph (c)2., subparagraph (c)5., subparagraph (c)8., or subparagraph (c)9. is confidential and is not discoverable or admissible for any other purpose, unless otherwise permitted by this section.

(e) Information that is otherwise admissible or discoverable does not become inadmissible or protected from discovery by reason of its disclosure or use in eldercaring coordination.

(f) A party that discloses or makes a representation about a privileged eldercaring coordination communication waives that privilege, but only to the extent necessary for the other party or parties to respond to the disclosure or representation.

(g)1. An eldercaring coordination party or participant who knowingly and willfully discloses an eldercaring coordination communication in violation of this subsection, upon application by any party to a court of competent jurisdiction, is subject to remedies, including:

a. Equitable relief.

b. Compensatory damages.

c. Contribution to the other party's or parties' attorney fees and costs, the other party's or parties' portion of the eldercaring coordinator fees, and the other party's or parties' portion of the costs incurred in the eldercaring coordination process.

d. Reasonable attorney fees and costs incurred in the application for remedies under this subsection.

2. Notwithstanding any other law, an application for relief filed under this paragraph may not be commenced later than 2 years after the date on which the party had a reasonable opportunity to discover the breach of confidentiality, but in no case more than 4 years after the breach.

3. An eldercaring coordination party or participant is not subject to a civil action under this paragraph for lawful compliance with s. 119.07.

(10) EMERGENCY REPORTING TO THE COURT.—

(a) An eldercaring coordinator must immediately inform the court by affidavit or verified report, without notice to the parties, if:

1. The eldercaring coordinator has made or will make a report pursuant to chapter 39 or chapter 415; or

2. A party, including someone acting on a party's behalf, is threatening or is believed to be planning to commit the offense of kidnapping, as defined in s. 787.01(1), upon an elder, or wrongfully removes or is removing the elder from the jurisdiction of the court without prior court approval or compliance with the requirements of s. 744.1098. If the eldercaring coordinator suspects that a party or family member has relocated an elder within this state to protect the elder from a domestic violence situation, the eldercaring coordinator may not disclose the location of the elder unless required by court order.

(b) An eldercaring coordinator shall immediately inform the court by affidavit or verified report and serve a copy of such affidavit or report on each party upon learning that a party is the subject of a final order or injunction of protection against domestic violence or exploitation of an elderly person or has been arrested for an act of domestic violence or exploitation of an elderly person.

(11) IMMUNITY FROM AND LIMITATION OF LIABILITY.—

(a) A person who is appointed or employed to assist the body designated to perform duties relating to disciplinary proceedings involving eldercaring coordinators has absolute immunity from liability arising from the performance of his or her duties while acting within the scope of his or her appointed functions or duties of employment.

(b) An eldercaring coordinator who is appointed by the court is not liable for civil damages for any act or omission within the scope of his or her duties under an order of referral unless such person acted in bad faith or with malicious

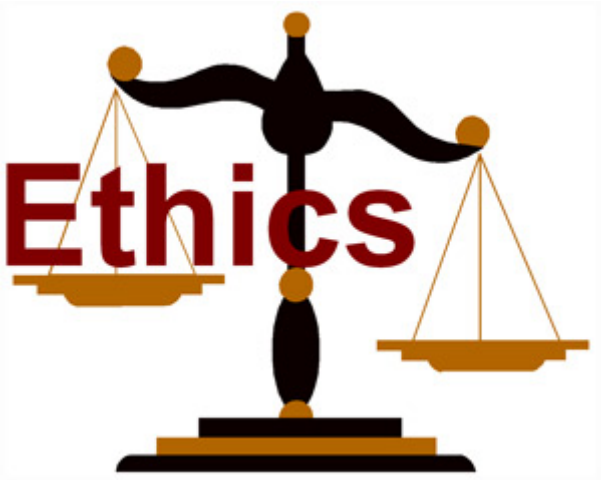
purpose or in a manner exhibiting wanton and willful disregard for the rights, safety, or property of the parties.

(12) MINIMUM STANDARDS AND PROCEDURES.—The Florida Supreme Court shall establish minimum standards and procedures for the qualification, ethical conduct, discipline, and training and education of eldercaring coordinators who serve under this section. Pending establishment of minimum standards and procedures for the discipline of eldercaring coordinators, the order of referral by the court may address procedures governing complaints against the appointed eldercaring coordinator consistent with this section. The Florida Supreme Court may appoint or employ such personnel as are necessary to assist the court in exercising its powers and performing its duties under this section.

History.—s. 1, ch. 2021-67.

Florida Rules for Certified & Court-Appointed Mediators

Effective August 2021



Florida Dispute Resolution Center
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Florida Rules for Certified and Court-Appointed Mediators

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Part I Mediator Qualifications

Rule 10.100 Certification Requirements

(a) General. For certification as a county court, family, circuit court, dependency, or appellate mediator, a mediator must be at least 21 years of age and be of good moral character. For certification as a county court, family, circuit court or dependency mediator, one must have the required number of points for the type of certification sought as specifically required in rule 10.105.

(b) County Court Mediators. For initial certification as a mediator of county court matters, an applicant must have at least a high school diploma or a General Equivalency Diploma (GED) and 100 points, which shall include:

(1) 30 points for successful completion of a Florida Supreme Court certified county court mediation training program;
(2) 10 points for education; and
(3) 60 points for mentorship.

(c) Family Mediators. For initial certification as a mediator of family and dissolution of marriage issues, an applicant must have at least a bachelor's degree and 100 points, which shall include, at a minimum:

(1) 30 points for successful completion of a Florida Supreme Court certified family mediation training program;
(2) 25 points for education/mediation experience; and
(3) 30 points for mentorship.

Additional points above the minimum requirements may be awarded for completion of additional education/mediation experience, mentorship, and miscellaneous activities.

(d) Circuit Court Mediators. For initial certification as a mediator of circuit court matters, other than family matters, an applicant must have at least a bachelor's degree and 100 points, which shall include, at a minimum:

(1) 30 points for successful completion of a Florida Supreme Court certified circuit mediation training program;
(2) 25 points for education/mediation experience; and
(3) 30 points for mentorship.

Additional points above the minimum requirements may be awarded for completion of additional education/mediation experience, mentorship, and miscellaneous activities.

(e) Dependency Mediators. For initial certification as a mediator of dependency matters, as defined in Florida Rule of Juvenile Procedure 8.290, an applicant must have at least a bachelor's degree and 100 points, which shall include, at a minimum:

(1) 30 points for successful completion of a Florida Supreme Court certified dependency mediation training program;
(2) 25 points for education/mediation experience; and
(3) 40 points for mentorship.

Additional points above the minimum requirements may be awarded for completion of additional education/mediation experience, mentorship, and miscellaneous activities.

(f) Appellate Mediators. For initial certification as a mediator of appellate matters, an applicant must be a Florida Supreme Court certified circuit, family or dependency mediator and successfully complete a Florida Supreme Court certified appellate mediation training program.

(g) Senior Judges Serving As Mediators. A senior judge may serve as a mediator in a court-ordered mediation in a circuit in which the senior judge is presiding over criminal cases or in a circuit in which the senior judge is not presiding as a judge, or in both, only if certified by the Florida Supreme Court as a mediator for that type of mediation.

(h) Referral for Discipline. If the certification or licensure necessary for any person to be certified as a family or circuit mediator is suspended or revoked, or if the mediator holding such certification or licensure is in any other manner disciplined, such matter shall be referred to the Mediator Qualifications Board for appropriate action pursuant to rule 10.800.

(i) Special Conditions. Mediators who are certified prior to August 1, 2006, shall not be subject to the point requirements for any category of certification in relation to which continuing certification is maintained.

Rule 10.105 Point System Categories

(a) Education. Points shall be awarded in accordance with the following schedule (points are only awarded for the highest level of education completed and honorary degrees are not included):

High School Diploma/GED	10 points
Associate's Degree	15 points
Bachelor's Degree	20 points
Master's Degree	25 points
Master's Degree in Conflict Resolution	30 points
Doctorate (e.g., Ph.D., J.D., M.D., Ed.D., LL.M)	30 points
Ph.D. from Accredited Conflict Resolution Program	40 points

An additional five points will be awarded for completion of a graduate level conflict resolution certificate program in an institution which has been accredited by Middle States Association of Colleges and Schools, the New England Association of Schools and Colleges, the North Central Association of Colleges and Schools, the Northwest Association of Schools and Colleges, the Southern Association of Colleges and Schools, the Western Association of Schools and Colleges, the American Bar Association, or an entity of equal status.

(b) Mediation Experience. One point per year will be awarded to a Florida Supreme Court certified mediator for each year that mediator has mediated at least 15 cases of any type. In the alternative, a maximum of five points will be awarded to any mediator, regardless of Florida Supreme Court certification, who has conducted a minimum of 100 mediations over a consecutive five-year period.

(c) Mentorship. Ten points will be awarded for each supervised mediation completed of the type for which certification is sought and five points will be awarded for each mediation session of the type for which certification is sought which is observed.

(d) Miscellaneous Points.

(1) Five points shall be awarded to applicants currently licensed or certified in any United States jurisdiction in psychology, accounting, social work, mental health, health care, education, or the practice of law or mediation. Such award shall not exceed a total of five points regardless of the number of licenses or certifications obtained.

(2) Five points shall be awarded for possessing conversational ability in a foreign language as demonstrated by certification by the American Council on the Teaching of Foreign Languages (ACTFL) Oral Proficiency Test, qualification as a court interpreter, accreditation by the American Translators Association, or approval as a sign language interpreter by the Registry of Interpreters for the Deaf. Such award shall not exceed a total of five points regardless of the number of languages in which the applicant is proficient.

(3) Five points shall be awarded for the successful completion of a mediation training program (minimum 30 hours in length) which is certified or approved by a jurisdiction other than Florida and which may not be the required Florida Supreme Court certified mediation training program. Such award shall not exceed five points regardless of the number of training programs completed.

(4) Five points shall be awarded for certification as a mediator by the Florida Supreme Court. Such award shall not exceed five points per category regardless of the number of training programs completed or certifications obtained.

Committee Notes

The following table is intended to illustrate the point system established in this rule. Any discrepancy between the table and the written certification requirements shall be resolved in favor of the latter.

Points Needed Per Area of Certification		**Minimum Points Required in Each Area**
County	100	30 certified county mediation training; 10 education (minimum HS Diploma/GED); 60 mentorship
Family	100	30 certified family mediation training; 25 education/mediation experience (minimum Bachelor's Degree); 30 mentorship [and requires 15 additional points]
Dependency	100	30 certified dependency mediation training; 25 education/mediation experience (minimum Bachelor's Degree); 40 mentorship [and requires 5 additional points]
Circuit	100	30 certified circuit mediation training, 25 education/mediation experience (minimum Bachelor's Degree); 30 mentorship; [and requires 15 additional points]

Education/Mediation Experience (points awarded for highest level of education received)			
HS Diploma/GED	10 points	Master's Degree in Conflict Resolution	30
Associate's Degree	15 points	Doctorate (e.g., JD, MD, PhD, EdD, LLM)	30
Bachelor's Degree	20 points	Ph.D. from accredited CR Program	40
Master's Degree	25 points	Graduate Certificate CR Program	+5
Florida certified mediator: 1 point per year in which mediated at least 15 mediations (any type) OR any mediator: – 5 points for minimum of 100 mediations (any type) over a 5 year period			

Mentorship - must work with at least 2 different certified mediators and must be completed for the type of certification sought	
Observation	5 points each session
Supervised Mediation	10 points each complete mediation

Miscellaneous Points	
Licensed to practice law, psychology, accounting, social work, mental health, health care, education or mediation in any US jurisdiction	5 points (total)
Florida Certified Mediator	5 points (total)
Foreign Language Conversational Ability as demonstrated by certification by ACTFL Oral Proficiency Test; qualified as a court interpreter; or accredited by the American Translators Association; Sign Language Interpreter as demonstrated by approval by the Registry of Interpreters for the Deaf	5 points (total)
Completion of additional mediation training program (minimum 30 hours in length) certified/approved by a state or court other than Florida	5 points (total)

Rule 10.110 Good Moral Character

(a) General Requirement. No person shall be certified by this Court as a mediator unless such person first produces satisfactory evidence of good moral character as required by rule 10.100.

(b) Purpose. The primary purpose of the requirement of good moral character is to ensure protection of the participants in mediation and the public, as well as to safeguard the justice system. A mediator shall have, as a prerequisite to certification and as a requirement for continuing certification, the good moral character sufficient to meet all of the Mediator Standards of Professional Conduct set out in rules 10.200-10.690.

(c) Certification. The following shall apply in relation to determining the good moral character required for initial and continuing mediator certification:

(1) The applicant's or mediator's good moral character may be subject to inquiry when the applicant's or mediator's conduct is relevant to the qualifications of a mediator.

(2) An applicant for initial certification who has been convicted of a felony shall not be eligible for certification until such person has received a restoration of civil rights.

(3) An applicant for initial certification who is serving a sentence of felony probation shall not be eligible for certification until termination of the period of probation.

(4) In assessing whether the applicant's or mediator's conduct demonstrates a present lack of good moral character the following factors shall be relevant:

(A) the extent to which the conduct would interfere with a mediator's duties and responsibilities;
(B) the area of mediation in which certification is sought or held;
(C) the factors underlying the conduct;
(D) the applicant's or mediator's age at the time of the conduct;
(E) the recency of the conduct;
(F) the reliability of the information concerning the conduct;
(G) the seriousness of the conduct as it relates to mediator qualifications;
(H) the cumulative effect of the conduct or information;
(I) any evidence of rehabilitation;
(J) the applicant's or mediator's candor; and
(K) denial of application, disbarment, or suspension from any profession.

(d) Decertification. A certified mediator shall be subject to decertification for any knowing and willful incorrect material information contained in any mediator application. There is a presumption of knowing and willful violation if the application is completed, signed, and notarized.

Rule 10.120 Notice of Change of Address or Name

(a) Address Change. Whenever any certified mediator changes residence or mailing address, that person must within 30 days thereafter notify the center of such change.

(b) Name Change. Whenever any certified mediator changes legal name, that person must within 30 days thereafter notify the center of such change.

Rule 10.130 Notification of Conviction

(a) Definition. "Conviction" means a determination of guilt which is the result of a trial, or entry of a plea of guilty or no contest, regardless of whether adjudication of guilt or imposition of sentence was suspended, deferred, or withheld, and applies in relation to any of the following:

(1) a felony, misdemeanor of the first degree, or misdemeanor of the second degree involving dishonesty or false statement;

(2) a conviction of a similar offense described in subdivision (1) that includes a conviction by a federal, military, or tribal tribunal, including courts-martial conducted by the Armed Forces of the United States;

(3) a conviction of a similar offense described in subdivision (1) that includes a conviction or entry of a plea of guilty or no contest resulting in a sanction in any jurisdiction of the United States or any foreign jurisdiction. A sanction includes, but is not limited to, a fine, incarceration in a state prison, federal prison, private correctional facility, or local detention facility; or

(4) a conviction of a similar offense described in subdivision (1) of a municipal or county ordinance in this or any other state.

(b) Report of Conviction. A conviction shall be reported in writing to the center within 30 days of such conviction. A report of conviction shall include a copy of the order or orders pursuant to which the conviction was entered.

(c) Suspension. Upon receipt of a report of felony conviction, the center shall immediately suspend all certifications and refer the matter to the qualifications complaint committee.

(d) Referral. Upon receipt of a report of misdemeanor conviction, the center shall refer the matter to the qualifications complaint committee for appropriate action. If the center becomes aware of a conviction prior to the required notification, it shall refer the matter to the qualifications complaint committee for appropriate action.

Rule 10.140 Operating Procedures and Authority

The Committee on Alternative Dispute Resolution Rules and Policy shall have the authority to promulgate, adopt, and amend operating procedures regarding:

(a) training standards and procedures for certified mediation training programs;

(b) requirements for continuing mediator education for certified mediators;

(c) administrative procedures governing the certification and renewal of mediators; and

(d) any other procedures necessary to implement these rules.

Part II Standards of Professional Conduct

Rule 10.200 Scope and Purpose

These Rules provide ethical standards of conduct for certified and court-appointed mediators. Court-appointed mediators are mediators selected by the parties or appointed by the court as the mediator in court-ordered mediations. These Rules are intended to both guide mediators in the performance of their services and instill public confidence in the mediation process. The public's use, understanding, and satisfaction with mediation can only be achieved if mediators embrace the highest ethical principles. Whether the parties involved in a mediation choose to resolve their dispute is secondary in importance to whether the mediator conducts the mediation in accordance with these ethical standards.

Committee Notes

2000 Revision. In early 1991, the Florida Supreme Court Standing Committee on Mediation and Arbitration Rules was commissioned by the Chief Justice to research, draft and present for adoption both a comprehensive set of ethical standards for Florida mediators and procedural rules for their enforcement. To accomplish this task, the Committee divided itself into two sub-committees and, over the remainder of the year, launched parallel programs to research and develop the requested ethical standards and grievance procedures.

The Subcommittee on Ethical Standards began its task by searching the nation for other states or private dispute resolution organizations who had completed any significant work in defining the ethical responsibilities of professional mediators. After searching for guidance outside the state, the subcommittee turned to Florida's own core group of certified mediators for more direct and firsthand data. Through a series of statewide public hearings and meetings, the subcommittee gathered current information on ethical concerns based upon the expanding experiences of practicing Florida certified mediators. In May of 1992, the "Florida Rules for Certified and Court-Appointed Mediators" became effective.

In the years following the adoption of those ethical rules, the Committee observed their impact on the mediation profession. By 1998, several other states and dispute resolution organizations initiated research into ethical standards for mediation which also became instructive to the Committee. In addition, Florida's Mediator Qualifications Advisory Panel, created to field ethical questions from practicing mediators, gained a wealth of pragmatic experience in the application of ethical concepts to actual practice that became available to the Committee. Finally, the Florida Mediator Qualifications and Discipline Review Board, the disciplinary body for mediators, developed specific data from actual grievances filed against mediators over the past several years, which also added to the available body of knowledge.

Using this new body of information and experience, the Committee undertook a yearlong study program to determine if Florida's ethical rules for mediators would benefit from review and revision.

Upon reviewing the 1992 ethical Rules, it immediately became apparent to the Committee that reorganization, renumbering, and more descriptive titles would make the Rules more useful. For that reason, the Rules were reorganized into four substantive groups which recognized a mediator's ethical responsibilities to the "parties," the "process," the "profession" and the "courts." The intent of the Committee here was to simply make the Rules easier to locate. There is no official significance in the order in which the Rules appear; any one area is equally important as all other areas. The Committee recognizes many rules overlap and define specific ethical responsibilities which impact more than one area. Clearly, a violation of a rule in one section may very well injure relationships protected in another section.

Titles to the Rules were changed to more accurately reflect their content. Additionally, redundancies were eliminated, phrasing tightened, and grammatical changes made to more clearly state their scope and purpose.

Finally, the Committee sought to apply what had been learned. The 2000 revisions are the result of that effort.

Rule 10.210 Mediation Defined

Mediation is a process whereby a neutral and impartial third person acts to encourage and facilitate the resolution of a dispute without prescribing what it should be. It is an informal and non-adversarial process intended to help disputing parties reach a mutually acceptable agreement.

Rule 10.220 Mediator's Role

The role of the mediator is to reduce obstacles to communication, assist in the identification of issues and exploration of alternatives, and otherwise facilitate voluntary agreements resolving the dispute. The ultimate decision-making authority, however, rests solely with the parties.

Rule 10.230 Mediation Concepts

Mediation is based on concepts of communication, negotiation, facilitation, and problem-solving that emphasize:

(a) self-determination;

(b) the needs and interests of the parties;

(c) fairness;

(d) procedural flexibility;

(e) confidentiality; and

(f) full disclosure.

Rule 10.300 Mediator's Responsibility to the Parties

The purpose of mediation is to provide a forum for consensual dispute resolution by the parties. It is not an adjudicatory procedure. Accordingly, a mediator's responsibility to the parties includes honoring their right of self-determination; acting with impartiality; and avoiding coercion, improper influence, and conflicts of interest. A mediator is also responsible for maintaining an appropriate demeanor, preserving confidentiality, and promoting the awareness by the parties of the interests of non-participating persons. A mediator's business practices should reflect fairness, integrity and impartiality.

Committee Notes

2000 Revision. Rules 10.300 - 10.380 include a collection of specific ethical concerns involving a mediator's responsibility to the parties to a dispute. Incorporated in this new section are the concepts formerly found in Rule 10.060 (Self Determination); Rule 10.070 (Impartiality/Conflict of Interest); Rule 10.080 (Confidentiality); Rule 10.090 (Professional Advice); and Rule 10.100 (Fees and Expenses). In addition, the Committee grouped under this heading ethical concerns dealing with the mediator's demeanor and courtesy, contractual relationships, and responsibility to non-participating persons.

Rule 10.310 Self-Determination

(a) Decision-making. Decisions made during a mediation are to be made by the parties. A mediator shall not make substantive decisions for any party. A mediator is responsible for assisting the parties in reaching informed and voluntary decisions while protecting their right of self-determination.

(b) Coercion Prohibited. A mediator shall not coerce or improperly influence any party to make a decision or unwillingly participate in a mediation.

(c) Misrepresentation Prohibited. A mediator shall not intentionally or knowingly misrepresent any material fact or circumstance in the course of conducting a mediation.

(d) Postponement or Cancellation. If, for any reason, a party is unable to freely exercise self-determination, a mediator shall cancel or postpone a mediation.

Committee Notes

2000 Revision. Mediation is a process to facilitate consensual agreement between parties in conflict and to assist them in voluntarily resolving their dispute. It is critical that the parties' right to self-determination (a free and informed choice to agree or not to agree) is preserved during all phases of mediation. A mediator must not substitute the judgment of the mediator for the judgment of the parties, coerce or compel a party to make a decision, knowingly allow a participant to make a decision based on misrepresented facts or circumstances, or in any other way impair or interfere with the parties' right of self-determination.

While mediation techniques and practice styles may vary from mediator to mediator and mediation to mediation, a line is crossed and ethical standards are violated when any conduct of the mediator serves to compromise the parties' basic right to agree or not to agree. Special care should be taken to preserve the party's right to self-determination if the mediator provides input to the mediation process. See Rule 10.370.

On occasion, a mediator may be requested by the parties to serve as a decision-maker. If the mediator decides to serve in such a capacity, compliance with this request results in a change in the dispute resolution process impacting self-determination, impartiality, confidentiality, and other ethical standards. Before providing decision-making services, therefore, the mediator shall ensure that all parties understand and consent to those changes. See Rules 10.330 and 10.340.

Under subdivision (d), postponement or cancellation of a mediation is necessary if the mediator reasonably believes the threat of domestic violence, existence of substance abuse, physical threat or undue psychological dominance are present and existing factors which would impair any party's ability to freely and willingly enter into an informed agreement.

Rule 10.320 Nonparticipating Persons

A mediator shall promote awareness by the parties of the interests of persons affected by actual or potential agreements who are not represented at mediation.

Committee Notes

2000 Revision. Mediated agreements will often impact persons or entities not participating in the process. Examples include lienholders, governmental agencies, shareholders, and related commercial entities. In family and dependency mediations, the interests of children, grandparents or other related persons are also often affected. A mediator is responsible for making the parties aware of the potential interests of such non-participating persons.

In raising awareness of the interests of non-participating persons, however, the mediator should still respect the rights of the parties to make their own decisions. Further, raising awareness of possible interests of related entities should not involve advocacy or judgments as to the merits of those interests. In family mediations, for example, a mediator should make the parents aware of the children's interests without interfering with self-determination or advocating a particular position.

Rule 10.330 Impartiality

(a) Generally. A mediator shall maintain impartiality throughout the mediation process. Impartiality means freedom from favoritism or bias in word, action, or appearance, and includes a commitment to assist all parties, as opposed to any one individual.

(b) Withdrawal for Partiality. A mediator shall withdraw from mediation if the mediator is no longer impartial.

(c) Gifts and Solicitation. A mediator shall neither give nor accept a gift, favor, loan, or other item of value in any mediation process. During the mediation process, a mediator shall not solicit or otherwise attempt to procure future professional services.

Committee Notes

2000 Revision. A mediator has an affirmative obligation to maintain impartiality throughout the entire mediation process. The duty to maintain impartiality arises immediately upon learning of a potential engagement for providing mediation services. A mediator shall not accept or continue any engagement for mediation services in which the ability to maintain impartiality is reasonably impaired or compromised. As soon as practical, a mediator shall make reasonable inquiry as to the identity of the parties or other circumstances which could compromise the mediator's impartiality.

During the mediation, a mediator shall maintain impartiality even while raising questions regarding the reality, fairness, equity, durability and feasibility of proposed options for settlement. In the event circumstances arise during a mediation that would reasonably be construed to impair or compromise a mediator's impartiality, the mediator is obligated to withdraw.

Subdivision (c) does not preclude a mediator from giving or accepting de minimis gifts or incidental items provided to facilitate the mediation.

Rule 10.340 Conflicts of Interest

(a) Generally. A mediator shall not mediate a matter that presents a clear or undisclosed conflict of interest. A conflict of interest arises when any relationship between the mediator and the mediation participants or the subject matter of the dispute compromises or appears to compromise the mediator's impartiality.

(b) Burden of Disclosure. The burden of disclosure of any potential conflict of interest rests on the mediator. Disclosure shall be made as soon as practical after the mediator becomes aware of the interest or relationship giving rise to the potential conflict of interest.

(c) Effect of Disclosure. After appropriate disclosure, the mediator may serve if all parties agree. However, if a conflict of interest clearly impairs a mediator's impartiality, the mediator shall withdraw regardless of the express agreement of the parties.

(d) Conflict During Mediation. A mediator shall not create a conflict of interest during the mediation. During a mediation, a mediator shall not provide any services that are not directly related to the mediation process.

(e) Senior and Retired Judges. If a mediator who is a senior judge or retired judge not eligible for assignment to temporary judicial duty has presided over a case involving any party, attorney, or law firm in the mediation, the mediator shall disclose such fact prior to mediation. A mediator shall not serve as a mediator in any case in a circuit in which the mediator is currently presiding over civil case as a senior judge. Absent express consent of the parties, a mediator shall not serve as a senior judge

over any case involving any party, attorney, or law firm that is utilizing or has utilized the judge as a mediator within the previous three years. A senior judge who provides mediation services may preside over criminal cases in circuits in which the judge provides mediation services. A senior judge who provides mediation services may also preside over civil and criminal cases in circuits in which the judge does not provide mediation services.

Committee Notes

2000 Revision. Potential conflicts of interests which require disclosure include the fact of a mediator's membership on a related board of directors, full or part time service by the mediator as a representative, advocate, or consultant to a mediation participant, present stock or bond ownership by the mediator in a corporate mediation participant, or any other form of managerial, financial, or family interest by the mediator in any mediation participant involved in a mediation. A mediator who is a member of a law firm or other professional organization is obliged to disclose any past or present client relationship that firm or organization may have with any party involved in a mediation. The duty to disclose thus includes information relating to a mediator's ongoing financial or professional relationship with any of the parties, counsel, or related entities. Disclosure is required with respect to any significant past, present, or promised future relationship with any party involved in a proposed mediation. While impartiality is not necessarily compromised, full disclosure and a reasonable opportunity for the parties to react are essential.

Disclosure of relationships or circumstances which would create the potential for a conflict of interest should be made at the earliest possible opportunity and under circumstances which will allow the parties to freely exercise their right of self-determination as to both the selection of the mediator and participation in the mediation process. A conflict of interest which clearly impairs a mediator's impartiality is not resolved by mere disclosure to, or waiver by, the parties. Such conflicts occur when circumstances or relationships involving the mediator cannot be reasonably regarded as allowing the mediator to maintain impartiality.

To maintain an appropriate level of impartiality and to avoid creating conflicts of interest, a mediator's professional input to a mediation proceeding must be confined to the services necessary to provide the parties a process to reach a self-determined agreement. Under subdivision (d), a mediator is accordingly prohibited from utilizing a mediation to supply any other services which do not directly relate to the conduct of the mediation itself. By way of example, a mediator would therefore be prohibited from providing accounting, psychiatric or legal services, psychological or social counseling, therapy, or business consultations of any sort during the mediation process. Mediators establish personal relationships with many representatives, attorneys, mediators, and other members of various professional associations. There should be no attempt to be secretive about such friendships or acquaintances, but disclosure is not necessary unless some feature of a particular relationship might reasonably appear to impair impartiality.

Rule 10.350 Demeanor

A mediator shall be patient, dignified, and courteous during the mediation process.

Rule 10.360 Confidentiality

(a) Scope. A mediator shall maintain confidentiality of all information revealed during mediation except where disclosure is required or permitted by law or is agreed to by all parties.

(b) Caucus. Information obtained during caucus may not be revealed by the mediator to any other mediation participant without the consent of the disclosing party.

(c) Record Keeping. A mediator shall maintain confidentiality in the storage and disposal of records and shall not disclose any identifying information when materials are used for research, training, or statistical compilations.

Rule 10.370 Advice, Opinions, or Information

(a) Providing Information. Consistent with standards of impartiality and preserving party self-determination, a mediator may provide information that the mediator is qualified by training or experience to provide.

(b) Independent Legal Advice. When a mediator believes a party does not understand or appreciate how an agreement may adversely affect legal rights or obligations, the mediator shall advise the party of the right to seek independent legal counsel.

(c) Personal or Professional Opinion. A mediator shall not offer a personal or professional opinion intended to coerce the parties, unduly influence the parties, decide the dispute, or direct a resolution of any issue. Consistent with standards of impartiality and preserving party self-determination however, a mediator may point out possible outcomes of the case and discuss the merits of a claim or defense. A mediator shall not offer a personal or professional opinion as to how the court in which the case has been filed will resolve the dispute.

Committee Notes

2000 Revision (previously Committee Note to 1992 adoption of former rule 10.090). Mediators who are attorneys should note Florida Bar Committee on Professional Ethics, formal opinion 86-8 at 1239, which states that the lawyer-mediator should "explain the risks of proceeding without independent counsel and advise the parties to consult counsel during the course of the mediation and before signing any settlement agreement that he might prepare for them."

2000 Revision. The primary role of the mediator is to facilitate a process which will provide the parties an opportunity to resolve all or part of a dispute by agreement if they choose to do so. A mediator may assist in that endeavor by providing relevant information or helping the parties obtain such information from other sources. A mediator may also raise issues and discuss strengths and weaknesses of positions underlying the dispute. Finally, a mediator may help the parties evaluate resolution options and draft settlement proposals. In providing these services however, it is imperative that the mediator maintain impartiality and avoid any activity which would have the effect of overriding the parties' rights of self-determination. While mediators may call upon their

own qualifications and experience to supply information and options, the parties must be given the opportunity to freely decide upon any agreement. Mediators shall not utilize their opinions to decide any aspect of the dispute or to coerce the parties or their representatives to accept any resolution option.

While a mediator has no duty to specifically advise a party as to the legal ramifications or consequences of a proposed agreement, there is a duty for the mediator to advise the parties of the importance of understanding such matters and giving them the opportunity to seek such advice if they desire.

Rule 10.380 Fees and Expenses

(a) Generally. A mediator holds a position of trust. Fees charged for mediation services shall be reasonable and consistent with the nature of the case.

(b) Guiding Principles in Determining Fees. A mediator shall be guided by the following general principles in determining fees:

(1) Any charges for mediation services based on time shall not exceed actual time spent or allocated.

(2) Charges for costs shall be for those actually incurred.

(3) All fees and costs shall be appropriately divided between the parties.

(4) When time or expenses involve two or more mediations on the same day or trip, the time and expense charges shall be prorated appropriately.

(c) Written Explanation of Fees. A mediator shall give the parties or their counsel a written explanation of any fees and costs prior to mediation. The explanation shall include:

(1) the basis for and amount of any charges for services to be rendered, including minimum fees and travel time;

(2) the amount charged for the postponement or cancellation of mediation sessions and the circumstances under which such charges will be assessed or waived;

(3) the basis and amount of charges for any other items; and

(4) the parties' pro rata share of mediation fees and costs if previously determined by the court or agreed to by the parties.

(d) Maintenance of Records. A mediator shall maintain records necessary to support charges for services and expenses and upon request shall make an accounting to the parties, their counsel, or the court.

(e) Remuneration for Referrals. No commissions, rebates, or similar remuneration shall be given or received by a mediator for a mediation referral.

(f) Contingency Fees Prohibited. A mediator shall not charge a contingent fee or base a fee on the outcome of the process.

Rule 10.400 Mediator's Responsibility to the Mediation Process

A mediator is responsible for safeguarding the mediation process. The benefits of the process are best achieved if the mediation is conducted in an informed, balanced and timely fashion. A mediator is responsible for confirming that mediation is an appropriate dispute resolution process under the circumstances of each case.

Committee Notes

2000 Revision. Rules 10.400 - 10.430 include a collection of specific ethical concerns involved in a mediator's responsibility to the mediation process. Incorporated in this new section are the concepts formerly found in rule 10.060 (Self-Determination), rule 10.090 (Professional Advice); and rule 10.110 (Concluding Mediation). In addition, the Committee grouped under this heading ethical concerns dealing with the mediator's duty to determine the existence of potential conflicts, a mandate for adequate time for mediation sessions, and the process for adjournment.

Rule 10.410 Balanced Process

A mediator shall conduct mediation sessions in an even-handed, balanced manner. A mediator shall promote mutual respect among the mediation participants throughout the mediation process and encourage the participants to conduct themselves in a collaborative, non-coercive, and non-adversarial manner.

Committee Notes

2000 Revision. A mediator should be aware that the presence or threat of domestic violence or abuse among the parties can endanger the parties, the mediator, and others. Domestic violence and abuse can undermine the exercise of self-determination and the ability to reach a voluntary and mutually acceptable agreement.

Rule 10.420 Conduct of Mediation

(a) Orientation Session. Upon commencement of the mediation session, a mediator shall describe the mediation process and the role of the mediator, and shall inform the mediation participants that:

(1) mediation is a consensual process;

(2) the mediator is an impartial facilitator without authority to impose a resolution or

adjudicate any aspect of the dispute; and

(3) communications made during the process are confidential, except where disclosure is required or permitted by law.

(b) Adjournment or Termination. A mediator shall:

(1) adjourn the mediation upon agreement of the parties;

(2) adjourn or terminate any mediation which, if continued, would result in unreasonable emotional or monetary costs to the parties;

(3) adjourn or terminate the mediation if the mediator believes the case is unsuitable for mediation or any party is unable or unwilling to participate meaningfully in the process;

(4) terminate a mediation entailing fraud, duress, the absence of bargaining ability, or unconscionability; and

(5) terminate any mediation if the physical safety of any person is endangered by the continuation of mediation.

(c) Closure. The mediator shall cause the terms of any agreement reached to be memorialized appropriately and discuss with the parties and counsel the process for formalization and implementation of the agreement.

Committee Notes

2000 Revision. In defining the role of the mediator during the course of an opening session, a mediator should ensure that the participants fully understand the nature of the process and the limits on the mediator's authority. See rule 10.370(c). It is also appropriate for the mediator to inform the parties that mediators are ethically precluded from providing non-mediation services to any party. See rule 10.340(d). Florida Rule of Civil Procedure 1.730(b), Florida Rule of Juvenile Procedure 8.290(o), and Florida Family Law Rule of Procedure 12.740(f) require that any mediated agreement be reduced to writing. Mediators have an obligation to ensure these rules are complied with, but are not required to write the agreement themselves.

Rule 10.430 Scheduling Mediation

A mediator shall schedule a mediation in a manner that provides adequate time for the parties to fully exercise their right of self-determination. A mediator shall perform mediation services in a timely fashion, avoiding delays whenever possible.

Rule 10.500 Mediator's Responsibility to the Courts

A mediator is accountable to the referring court with ultimate authority over the case. Any interaction discharging this responsibility, however, shall be conducted in a manner consistent with these ethical rules.

Committee Notes

2000 Revision. Rules 10.500 - 10.540 include a collection of specific ethical concerns involved in a mediator's responsibility to the courts. Incorporated in this new section are the concepts formerly found in rule 10.040 (Responsibilities to Courts).

Rule 10.510 Information to the Court

A mediator shall be candid, accurate, and fully responsive to the court concerning the mediator's qualifications, availability, and other administrative matters.

Rule 10.520 Compliance with Authority

A mediator shall comply with all statutes, court rules, local court rules, and administrative orders relevant to the practice of mediation.

Rule 10.530 Improper Influence

A mediator shall refrain from any activity that has the appearance of improperly influencing a court to secure an appointment to a case.

Committee Notes

2000 Revision. Giving gifts to court personnel in exchange for case assignments is improper. De minimis gifts generally distributed as part of an overall business development plan are excepted. See also rule 10.330.

Rule 10.600 Mediator's Responsibility to the Mediation Profession

A mediator shall preserve the quality of the profession. A mediator is responsible for maintaining professional competence and forthright business practices, fostering good relationships, assisting new mediators, and generally supporting the advancement of mediation.

Committee Notes

2000 Revision. Rules 10.600 - 10.690 include a collection of specific ethical concerns involving a mediator's responsibility to the mediation profession. Incorporated in this new section are the concepts formerly found in rule 10.030 (General Standards and Qualifications), rule 10.120 (Training and Education), rule 10.130 (Advertising), rule 10.140 (Relationships with Other Professionals), and rule 10.150 (Advancement of Mediation).

Rule 10.610 Marketing Practices

(a) False or Misleading Marketing Practices. A mediator shall not engage in any marketing practice, including advertising, which contains false or misleading information. A mediator shall ensure that any marketing of the mediator's qualifications, services to be rendered, or the mediation process is accurate and honest.

(b) Supreme Court Certification. Any marketing practice in which a mediator indicates that such mediator is "Florida Supreme Court certified" is misleading unless it also identifies at least one area of certification in which the mediator is certified.

(c) Other Certifications. Any marketing publication that generally refers to a mediator being "certified" is misleading unless the advertising mediator has successfully completed an established process for certifying mediators that involves actual instruction rather than the mere payment of a fee. Use of the term "certified" in advertising is also misleading unless the mediator identifies the entity issuing the referenced certification and the area or field of certification earned, if applicable.

(d) Prior Adjudicative Experience. Any marketing practice is misleading if the mediator states or implies that prior adjudicative experience, including, but not limited to, service as a judge, magistrate, or administrative hearing officer, makes one a better or more qualified mediator.

(e) Prohibited Claims or Promises. A mediator shall not make claims of achieving specific outcomes or promises implying favoritism for the purpose of obtaining business.

(f) Additional Prohibited Marketing Practices. A mediator shall not engage in any marketing practice that diminishes the importance of a party's right to self-determination or the impartiality of the mediator, or that demeans the dignity of the mediation process or the judicial system.

Commentary

2010 Revision. Areas of certification in subdivision (b) include county, family, circuit, dependency and other Supreme Court certifications.

The roles of a mediator and an adjudicator are fundamentally distinct. The integrity of the judicial system may be impugned when the prestige of the judicial office is used for commercial purposes. When engaging in any mediation marketing practice, a former adjudicative officer should not lend the prestige of the judicial office to advance private interests in a manner inconsistent with this rule. For example, the depiction of a mediator in judicial robes or use of the word "judge" with or without modifiers to the mediator's name would be inappropriate. However, an accurate representation of the mediator's judicial experience would not be inappropriate.

Rule 10.620 Integrity and Impartiality

A mediator shall not accept any engagement, provide any service, or perform any act that would compromise the mediator's integrity or impartiality.

Rule 10.630 Professional Competence

A mediator shall acquire and maintain professional competence in mediation. A mediator shall regularly participate in educational activities promoting professional growth.

Rule 10.640 Skill and Experience

A mediator shall decline an appointment, withdraw, or request appropriate assistance when the facts and circumstances of the case are beyond the mediator's skill or experience.

Rule 10.650 Concurrent Standards

Other ethical standards to which a mediator may be professionally bound are not abrogated by these rules. In the course of performing mediation services, however, these rules prevail over any conflicting ethical standards to which a mediator may otherwise be bound.

Rule 10.660 Relationships with Other Mediators

A mediator shall respect the professional relationships of another mediator.

Rule 10.670 Relationships with Other Professionals

A mediator shall respect the role of other professional disciplines in the mediation process and shall promote cooperation between mediators and other professionals.

Rule 10.680 Prohibited Agreements

With the exception of an agreement conferring benefits upon retirement, a mediator shall not restrict or limit another mediator's practice following termination of a professional relationship.

Committee Notes

2000 Revision. Rule 10.680 is intended to discourage covenants not to compete or other practice restrictions arising upon the termination of a relationship with another mediator or mediation firm. In situations where a retirement program is being contractually funded or supported by a surviving mediator or mediation firm, however, reasonable restraints on competition are acceptable.

Rule 10.690 Advancement of Mediation

(a) Pro Bono Service. Mediators have a responsibility to provide competent services to persons seeking their assistance, including those unable to pay for services. A mediator should provide mediation services pro bono or at a reduced rate of compensation whenever appropriate.

(b) New Mediator Training. An experienced mediator should cooperate in training new mediators, including serving as a mentor.

(c) Support of Mediation. A mediator should support the advancement of mediation by encouraging and participating in research, evaluation, or other forms of professional development and public education.

Part III Mediation Certification and Applications Discipline

Rule 10.700 Scope and Purpose

These rules apply to all proceedings before investigatory committees and adjudicatory panels of the Mediator Qualifications and Discipline Review Board (MQDRB) involving applications for certification or discipline of certified and court-appointed mediators. The purpose of these rules is to provide a means for enforcing the Florida Rules for Certified and Court-Appointed Mediators (Rules).

Rule 10.710 Privilege to Mediate

The privilege to mediate as a certified or court-appointed mediator is conditional, confers no vested right, and is revocable for cause.

Rule 10.720 Definitions

(a) Applicant. A new applicant with no previous certifications, an applicant for renewal of a current certification, an applicant for additional certifications, and an applicant for reinstatement of certification.

(b) Court-Appointed. Being appointed by the court or selected by the parties as the mediator in a court-ordered mediation.

(c) Division. One of the standing divisions of the MQDRB established on a regional basis.

(d) DRC or Center. The Florida Dispute Resolution Center of the Office of the State Courts Administrator.

(e) File. To deliver to the office of the Florida Dispute Resolution Center of the Office of the State Courts Administrator pleadings, motions, instruments, and other papers for preservation and reference.

(f) Good Moral Character Inquiry. A process which is initiated based on information which comes to the attention of the DRC relating to the good moral character of a certified or court-appointed mediator or applicant for certification.

(g) Investigator. A certified mediator, lawyer, or other qualified individual retained by the DRC at the direction of a RVCC or a QIC to conduct an investigation.

(h) MQDRB or Board. The Mediator Qualifications and Discipline Review Board.

(i) Panel. Five members of the MQDRB selected by the DRC by rotation to adjudicate the formal charges associated with a rule violation or a good moral character complaint, selected from the division in which the complaint arose unless, in the discretion of the DRC Director, there is good reason to choose members from 1 of the other divisions.

(j) Panel Adviser. A member of The Florida Bar retained by the DRC to assist a panel in performing its functions during a hearing. A panel adviser provides procedural advice only, is in attendance at the hearing, is not part of the panel's private deliberations, but may sit in on deliberations in order to answer procedural questions and is authorized to draft the decision and opinion of the panel for approval by the full panel and execution by the Chair.

(k) Prosecutor. A member of The Florida Bar in good standing retained by the DRC to prosecute a complaint before a hearing panel. The Prosecutor is authorized to perform additional investigation in order to prepare the case, negotiate a consent to charges and an agreement to the imposition of sanctions to be presented to the panel prior to the hearing, and to fully prosecute the case, including any post hearing proceedings.

(l) Qualifications Inquiry Committee or QIC. Four members of the MQDRB, no more than 1 from each division, selected by the DRC by rotation to serve for a 1-year period to conduct investigations and disposition of any good moral character inquiry for any applicant.

(m) Rule Violation Complaint. Formal submission of alleged violation(s) of the Florida Rules for Certified and Court-Appointed Mediators. A complaint may originate from any person or from the DRC.

(n) Rule Violation Complaint Committee or RVCC. Three members of the MQDRB selected by the DRC by rotation to conduct the investigation and disposition of any rule violation complaint.

Rule 10.730 Mediator Qualifications and Discipline Review Board

(a) Generally. The Mediator Qualifications and Discipline Review Board (MQDRB) shall be composed of 4 standing divisions that shall be located in the following regions:

(1) Northern: encompassing the First, Second, Third, Fourth, Eighth, and Fourteenth judicial circuits;

(2) Central: encompassing the Fifth, Seventh, Ninth, Tenth, Eighteenth and Nineteenth judicial circuits;

(3) Southeast: encompassing the Eleventh, Fifteenth, Sixteenth, and Seventeenth judicial circuits; and

(4) Southwest: encompassing the Sixth, Twelfth, Thirteenth, and Twentieth judicial circuits.

Other divisions may be formed by the Supreme Court of Florida based on need.

(b) Composition of Divisions. Each division of the MQDRB shall be composed of:

(1) Judges: three circuit, county, or appellate judges;

(2) County Mediators: three certified county mediators;

(3) Circuit Mediators: three certified circuit court mediators;

(4) Family Mediators: three certified family mediators, at least 2 of whom shall be non-lawyers;

(5) Dependency Mediators: not less than 1 nor more than 3 certified dependency mediators, at least 1 of whom shall be a non-lawyer;

(6) Appellate Mediators: not less than 1 nor more than 3 certified appellate mediators; and

(7) Attorneys: three attorneys who are currently or were previously licensed to practice law in Florida for at least 3 years who have or had a substantial trial or appellate practice and are neither certified as mediators nor judicial officers during their terms of service on the MQDRB but who have a knowledge of and experience with mediation practice, statutes, and rules, at least 1 of whom shall have a substantial family law practice.

(c) Appointment and Term. Eligible persons shall be appointed to the MQDRB by the chief justice of the Supreme Court of Florida for a period of 4 years. The terms of the MQDRB members shall be staggered. No member of the MQDRB shall serve more than 3 consecutive terms. The term of any member serving on a committee or panel may continue until the final disposition of their service on a case.

(d) Rule Violation Complaint Committee (RVCC). Each RVCC shall be composed of 3 members of the MQDRB selected by the DRC on a rotation basis. To the extent possible, members of a RVCC shall be selected from the division in which the alleged violation occurred. RVCCs are assigned to a single case; however they may be assigned to related cases to be disposed of collectively as is deemed appropriate by the DRC Director. A RVCC shall cease to exist after the disposition of the case(s) to which they are assigned. Each RVCC shall be composed of:

(1) one judge or attorney, who shall act as the chair of the committee;

(2) one mediator~~,~~ who is certified in the area to which the complaint refers; and

(3) one other certified mediator.

(e) Qualifications Inquiry Committee (QIC). Each QIC shall be composed of 4 members, 1 from each of the 4 divisions of the MQDRB, selected by the DRC on a rotation basis to serve for a period of 1 year or until completion of all assigned cases, whichever occurs later. The QIC shall be composed of:

(1) one judge or attorney, who shall act as the chair of the committee; and

(2) three certified mediators.

(f) Panels. Each panel shall be composed of 5 members of the MQDRB selected by the DRC on a rotation basis. To the extent possible, members shall be selected from the division in which the alleged violation occurred or, in the case of a good moral character inquiry, from the division based on the Florida address of the subject of the inquiry. Panels are assigned to a single case; however, they may be assigned to related cases to be disposed of collectively as is deemed appropriate by the DRC Director. A panel shall cease to exist after disposing of all cases to which it is assigned. Each panel shall be composed of:

(1) one judge, who shall serve as the chair;

(2) three certified mediators, at least 1 of whom shall be certified in the area to which the complaint or inquiry refers; and

(3) one attorney who shall serve as vice-chair. The vice-chair shall act as the chair of the panel in the event of the unavailability of the chair.

(g) Decision making. For all RVCCs, QICs, and panels, while unanimity is the preferred method of decision making, a majority vote shall rule.

Committee Notes

2000 Revision. In relation to (b)(5), the Committee believes that the chief justice should have discretion in the number of dependency mediators appointed to the board depending on the number of certified dependency mediators available for appointment. It is the intention of the Committee that when dependency mediation reaches a comparable level of activity to the other 3 areas of certification, the full complement of 3 representatives per division should be realized.

Rule 10.740 Jurisdiction and Powers

(a) RVCC. Each RVCC shall have such jurisdiction and powers as are necessary to conduct the proper and speedy investigation and disposition of any complaint. The judge or attorney chairing the RVCC shall have the power to compel:

(1) attendance of any person at a RVCC proceeding;

(2) statements, testimony, and depositions of any person; and

(3) production of documents, records, and other evidence.

The RVCC shall perform its investigatory function and have concomitant power to resolve cases prior to panel referral.

(b) QIC. The QIC shall have such jurisdiction and powers as are necessary to conduct the proper and speedy investigation and disposition of: any good moral character inquiry pursuant to rule 10.800; petitions for reinstatement; or other matters referred by the DRC. The judge or attorney chairing the QIC shall have the power to compel:

(1) attendance of any person at a QIC proceeding;

(2) statements, testimony, and depositions of any person; and

(3) production of documents, records, and other evidence.

The QIC shall perform its investigatory function and have concomitant power to resolve cases prior to panel referral.

(c) Panel. Each panel shall have such jurisdiction and powers as are necessary to conduct the proper and speedy adjudication and disposition of any proceeding before it. The panel shall perform the adjudicatory function, but shall not have any investigatory functions.

(d) Panel Chair. The chair of a panel shall have the power to:

(1) compel the attendance of witnesses;

(2) issue subpoenas to compel the depositions of witnesses;

(3) order the production of records or other documentary evidence;

(4) hold anyone in contempt prior to and during the hearing;

(5) implement procedures during the hearing;

(6) determine admissibility of evidence; and

(7) decide motions prior to or during the hearing.

The vice-chair of a panel, upon the unavailability of the chair, is authorized only to issue subpoenas or order the production of records or other documentary evidence.

(e) Contempt/Disqualification Judge. One MQDRB judge member from each division shall be designated by the DRC, to serve for a term of 1 year, to hear all motions for contempt at the complaint committee level (RVCC or QIC) and hear motions for disqualification of any member of a RVCC, QIC or panel.

Rule 10.750 Contempt Process

(a) General. Should any person fail, without justification, to respond to the lawful subpoena of a RVCC, QIC, or panel, or, having responded, fail or refuse to answer all inquiries or to turn over evidence that has been lawfully subpoenaed, or should any person be guilty of disorderly conduct, that person may be found to be in contempt.

(b) RVCC or QIC Contempt. A motion for contempt based on the grounds delineated in subdivision (a) above along with a proposed order to show cause may be filed before the contempt/disqualification judge in the division in which the matter is pending. The motion shall allege the specific failure on the part of the person or the specific disorderly or contemptuous act of the person which forms the basis of the alleged contempt.

(c) Panel Contempt. The chair of a panel may hear any motions filed either before or during a hearing or hold any person in contempt for conduct occurring during the hearing.

Rule 10.760 Duty to Inform

A certified mediator shall inform the DRC in writing within 30 days of having been reprimanded, sanctioned, or otherwise disciplined by any court, administrative agency, bar association, or other professional group.

Rule 10.770 Staff

The DRC shall provide all staff support to the MQDRB necessary to fulfill its duties and responsibilities under these rules and perform all other functions specified in these rules.

Rule 10.800 Good Moral Character Inquiry Process

(a) Generally. Good moral character issues of applicants shall be heard by the QIC to determine if an applicant has the good moral character necessary to be certified pursuant to rule 10.110. If, during the term of certification of a mediator, the DRC becomes aware of any information concerning a certified mediator which could constitute credible evidence of a lack of good moral character under rule 10.110, the DRC shall refer such information to a RVCC as a rule violation complaint pursuant to 10.810. The QIC and RVCC shall be informed of the applicant's or mediator's prior disciplinary history.

(b) Meetings. The QIC shall convene as necessary by conference call or other electronic means to consider all cases currently pending before it.

(c) Initial Review. Prior to approving a new or renewal application for certification, the DRC shall review the application and any other information to determine whether the applicant appears to meet the standards for good moral character under rule 10.110. If the DRC's review of an application for certification or renewal raises any questions regarding the applicant's good moral character, the DRC shall request the applicant to supply additional information as necessary. Upon

completing this extended review, if the information continues to raise questions regarding the applicant's good moral character, the DRC shall forward the application and supporting material as an inquiry to the QIC.

(d) Process. In reviewing all documentation relating to the good moral character of any applicant, the QIC shall follow the process below.

(1) In relation to a new application, the QIC shall either recommend approval or, if it finds there is reason to believe that the applicant lacks good moral character, the QIC may do 1 or more of the following:

(A) offer the applicant the opportunity to withdraw his/her application prior to the finding of probable cause;

(B) offer the applicant the opportunity to satisfy additional conditions prior to approval of application; or

(C) prepare a complaint and submit the complaint to the DRC for forwarding to the applicant. The complaint shall state with particularity the specific facts and details that form the basis of the complaint. The applicant shall respond within 20 days of receipt of the complaint unless the time is otherwise extended by the DRC in writing.

(i) After the response is received, the QIC may:

1. dismiss the complaint and approve the application; or

2. make a finding of probable cause, prepare formal charges, and refer the matter to the DRC for assignment to a panel.

(2) In relation to a renewal application, the QIC shall either recommend approval or, if it finds there is reason to believe that the renewal applicant lacks good moral character, the QIC may do 1 or more of the following:

(A) offer the renewal applicant the opportunity to withdraw his/her application and may include the necessity to resign any other certifications prior to the finding of probable cause; or

(B) offer the applicant the opportunity to satisfy additional conditions prior to approval of application; or

(C) prepare a complaint and submit same to the DRC for forwarding to the applicant. The complaint shall state with particularity the specific facts and details that form the basis of the complaint. The applicant shall respond to the complaint within 20 days of receipt unless otherwise extended by the DRC in writing.

(i) After the response is received, the QIC may:

1. dismiss the complaint and approve the renewal application; or
2. make a finding of probable cause, prepare formal charges and refer the matter to the DRC for assignment to a panel.

(e) Notification. Within 10 days of a matter being referred to the QIC, the DRC shall send notification to the applicant of the existence of a good moral character inquiry. Notification to the applicant shall be made by certified mail addressed to the applicant's physical address on file with the DRC until such time as the mediator expressly agrees in writing to accept service electronically and then notification shall be made to the applicant's e-mail address on file with the DRC.

(f) Investigation. The QIC, after review of the information presented, may direct the DRC to retain the services of an investigator to assist the QIC in any of its functions. The QIC, or any member or members thereof, may also conduct an investigation if authorized by the QIC chair. Any investigation may include meeting with the applicant or any other person.

(g) QIC Meeting with the Applicant. Notwithstanding any other provision in this rule, at any time while the QIC has jurisdiction, it may meet with the applicant in an effort to resolve the matter. This resolution may include additional conditions to certification if agreed to by the applicant. If additional conditions are accepted, all relevant documentation shall be forwarded to the DRC. These meetings may be in person, by teleconference, or other communication method at the discretion of the QIC.

(h) Notice and Publication. Any consensual resolution agreement with an applicant which includes sanctions shall be distributed by the DRC to all circuits and districts through the chief judges, all trial and appellate court administrators, the ADR directors, and mediation coordinators and published on the DRC page of the Florida Courts website with a summary of the case and a copy of the agreement.

(i) Review. If no other disposition has occurred, the QIC shall review all available information including the applicant's response to a complaint, any investigative report, and any underlying documentation to determine whether there is probable cause to believe that the alleged conduct would constitute evidence of the applicant's lack of good moral character.

(j) No Probable Cause. If the QIC finds no probable cause, it shall close the inquiry by dismissal and so advise the applicant in writing.

(k) Probable Cause and Formal Charges. If the QIC finds probable cause to believe the applicant lacks the good moral character necessary to be certified as a mediator, the QIC shall draft formal charges and forward such charges to the DRC for assignment to a panel. The charges shall include a statement of the matters regarding the applicant's lack of good moral character and references to the rules relating to those matters. At the request of the QIC, the DRC may retain a member in good standing of The Florida Bar to conduct such additional investigation as necessary and to draft the

formal charges for the QIC. The formal charges shall be signed by the chair, or, in the alternative, by the remaining 3 members of the QIC.

(l) Withdrawal of Application. A withdrawal of an application does not result in the loss of jurisdiction by the QIC.

(m) Panel. If a matter is referred to a panel under this section, the process shall proceed pursuant to rule 10.820.

Committee Notes

2015 Revision. A lack of good moral character may be determined not only by 1 incident but also by the cumulative effect of many instances. In reviewing an application for matters concerning the good moral character of any applicant, prior disciplinary actions against the applicant, from whatever source, should be provided to the QIC for their review and consideration.

Rule 10.810 Rule Violations Complaint Process

(a) Initiation of Complaint. Any individual or the DRC may make a complaint alleging that a mediator has violated 1 or more provisions of these rules. The complaint from an individual shall be written, sworn to under oath and notarized using a form supplied by the DRC. A complaint initiated by the DRC need not be sworn nor notarized but shall be signed by the director or the DRC staff attorney, if any. The complaint shall state with particularity the specific facts and details that form the basis of the complaint.

(b) Filing. The complaint shall be filed with the DRC. Once received by the DRC, the complaint shall be stamped with the date of receipt.

(c) Assignment to a Rules Violation Complaint Committee (RVCC). Upon receipt of a complaint, the DRC shall assign the complaint to a RVCC within a reasonable period of time. The RVCC shall be informed by the DRC of the mediator's prior disciplinary history. As soon as practical after the receipt of a complaint from an individual, the DRC shall send a notification of the receipt of the complaint to the complainant.

(d) Facial Sufficiency Determination. The RVCC shall convene by conference call to determine whether the allegation(s), if true, would constitute a violation of these rules.

(1) If the RVCC finds a complaint against a mediator to be facially insufficient, the complaint shall be dismissed without prejudice and the complainant shall be so notified and given an opportunity to re-file within a 20-day time period. No complainant whose complaint is dismissed without prejudice pursuant to this section shall be permitted more than 1 additional filing to establish facial sufficiency.

(2) If the complaint is found to be facially sufficient, the RVCC shall prepare a list of any rule or rules which may have been violated and shall submit same to the DRC.

(e) Service. Upon the finding of facial sufficiency of a complaint, the DRC shall serve on the mediator a copy of the list of alleged rule violations, a copy of the complaint, and a link to an electronic copy of these rules or the rules which were in effect at the time of the alleged violation. Service on the mediator shall be made either electronically or by certified mail addressed to the mediator's physical or e-mail address on file with the DRC.

(f) Response. Within 20 days of the receipt of the list of alleged rule violations and the complaint, the mediator shall send a written, sworn under oath, and notarized response to the DRC by registered or certified mail. Unless extended in writing by the DRC, if the mediator does not respond within the 20-day time frame, the allegations shall be deemed admitted and the matter may be referred to a panel.

(g) Resignation of Certification. A resignation of certification by a mediator after the filing of a complaint does not result in the loss of jurisdiction by the MQDRB.

(h) Investigation. The RVCC, after review of the complaint and response, may direct the DRC to appoint an investigator to assist the RVCC in any of its functions. The RVCC, or any member or members thereof, may also conduct an investigation if authorized by the RVCC chair. Any investigation may include meeting with the mediator, the complainant or any other person.

(i) RVCC Meeting with the Complainant and Mediator. Notwithstanding any other provision in this rule, at any time while the RVCC has jurisdiction, it may meet with the complainant and the mediator, jointly or separately, in an effort to resolve the matter. This resolution may include sanctions as set forth in rule 10.840(a) if agreed to by the mediator. If sanctions are accepted, all relevant documentation shall be forwarded to the DRC. Such meetings may be in person, by teleconference, or other communication method, at the discretion of the RVCC.

(j) Notice and Publication. Any consensual resolution agreement which includes sanctions shall be distributed by the DRC to all circuits and districts through the chief judges, all trial and appellate court administrators, the ADR directors, and mediation coordinators and published on the DRC page of the Florida Courts website with a summary of the case, the rule or rules listed as violated, the circumstances surrounding the violation of the rules, and a copy of the agreement.

(k) Review. If no other disposition has occurred, the RVCC shall review the complaint, the response, and any investigative report, including any underlying documentation, to determine whether there is probable cause to believe that the alleged misconduct occurred and would constitute a violation of the rules.

(l) No Probable Cause. If the RVCC finds no probable cause, it shall dismiss the complaint with prejudice and so advise the complainant and the mediator in writing. Such decision shall be final.

(m) Probable Cause Found. If the RVCC finds that probable cause exists, it may:

(1) draft formal charges and forward such charges to the DRC for assignment to a panel; or

(2) decide not to proceed with the case by filing an Order of Non-Referral containing a short and plain statement of the rules for which probable cause was found and the reason or reasons for non-referral, and so advise the complainant and the mediator in writing.

(n) Formal Charges and Counsel. If the RVCC finds probable cause that the mediator has violated 1 or more of these rules, the RVCC shall draft formal charges and forward such charges to the DRC for assignment to a panel. The charges shall include a statement of the matters asserted in the complaint relevant to the finding of rules violations, any additional information relevant to the finding of rules violations, and references to the particular sections of the rules violated. The formal charges shall be signed by the chair, or, in the alternative, by the other 2 members of the RVCC. At the request of the RVCC, the DRC may retain a member in good standing of The Florida Bar to conduct such additional investigation as necessary and draft the formal charges.

(o) Dismissal. Upon the filing of a stipulation of dismissal signed by the complainant and the mediator, and with the concurrence of the RVCC, which may withhold concurrence, the complaint shall be dismissed with prejudice.

Rule 10.820 Hearing Panel Procedures

(a) Notification of Formal Charges. Upon the referral of formal charges to the DRC from a RVCC or QIC, the DRC shall promptly send a copy of the formal charges to the mediator or applicant and complainant, if any, by certified mail, return receipt requested.

(b) Prosecutor. Upon the referral of formal charges, the DRC shall retain the services of a member in good standing of The Florida Bar to prosecute the case.

(c) Panel Adviser. After the referral of formal charges, the DRC may retain the services of a member in good standing of The Florida Bar to attend the hearing and advise and assist the panel on procedural and administrative matters.

(d) Assignment to Panel. After the referral of formal charges to the DRC, the DRC shall send to the complainant, if any, and the mediator or applicant a Notice of Assignment of the case to a panel. No member of the RVCC or QIC that referred the formal charges shall serve as a member of the panel.

(e) Assignment of Related Cases. If the DRC assigns related cases to a panel for a single hearing, any party to those cases may make a motion for severance which shall be heard by the chair of the panel.

(f) Time of the Hearing. Absent stipulation of the parties or good cause, the DRC shall set the hearing for a date not more than 120 days nor less than 30 days from the date of the notice of assignment of the case to the panel. Within 10 days of the scheduling of the hearing, a notice of hearing shall be sent by certified mail to the mediator or applicant and his or her attorney, if any.

(g) Admission to Charges. At any time prior to the hearing, the panel may accept an admission to any or all charges and impose sanctions upon the mediator or applicant. The panel shall not be required to meet in person to accept any such admission and imposition of sanctions.

(h) Dismissal by Stipulation. Upon the filing of a stipulation of dismissal signed by the complainant, if any, the mediator or applicant, and the prosecutor and with the review and concurrence of the panel, which concurrence may be withheld, the case shall be dismissed with prejudice. Upon dismissal, the panel shall promptly forward a copy of the dismissal order to the DRC.

(i) Procedures for Hearing. The procedures for a hearing shall be as follows:

(1) Panel Presence. No hearing shall be conducted without the chair being physically present. All other panel members must be physically present unless the chair determines that exceptional circumstances are shown to exist which include, but are not limited to, unexpected illness, unexpected incapacity, or unforeseeable and unavoidable absence of a panel member. Upon such determination, the hearing may proceed with no fewer than 4 panel members, of which 1 is the chair. In the event only 4 of the panel members are present, at least 3 members of the panel must agree on the decisions of the panel. If 3 members of the panel cannot agree on the decision, the hearing shall be rescheduled.

(2) Decorum. The hearing may be conducted informally but with decorum.

(3) Oath. Anyone testifying in the hearing shall swear or affirm to tell the truth.

(4) Florida Evidence Code. The rules of evidence applicable to trials of civil actions shall apply but are to be liberally construed.

(5) Testimony. Testimony at the hearing may be given through the use of telephonic or other communication equipment upon a showing of good cause to the chair of the panel within a reasonable time prior to the hearing.

(6) Right to Defend. A mediator or applicant shall have the right: to defend against all charges; to be represented by an attorney; to examine and cross-examine witnesses; to compel the attendance of witnesses to testify; and to compel the production of documents and other evidentiary matter through the subpoena power of the panel.

(7) Mediator or Applicant Discovery. The prosecutor shall, upon written demand of a mediator, applicant, or counsel of record, promptly furnish the following: the names and addresses of all witnesses whose testimony is expected to be offered at the hearing; copies of all written statements and transcripts of the testimony of such witnesses in the possession of the prosecutor or the DRC which are relevant to the subject matter of the hearing and which have not previously been furnished; and copies of any exhibits which are expected to be offered at the hearing.

(8) Prosecutor Discovery. The mediator, applicant, or their counsel of record shall, upon written demand of the prosecutor, promptly furnish the following: the names and addresses of all witnesses whose testimony is expected to be offered at the hearing; copies of all written statements and transcripts of the testimony of such witnesses in the possession of the mediator, applicant or their counsel of record which are relevant to the subject matter of the hearing and which have not previously been furnished; and copies of any exhibits which are expected to be offered at the hearing.

(9) Complainant's Failure to Appear. Absent a showing of good cause, if the complainant fails to appear at the hearing, the panel may dismiss the case.

(10) Mediator's or Applicant's Failure to Appear. If the mediator or applicant has failed to answer the underlying complaint or fails to appear, the panel may proceed with the hearing.

(A) If the hearing is conducted in the absence of a mediator or applicant who failed to respond to the underlying complaint and the allegations were therefore admitted, no further notice to the mediator or applicant is necessary and the decision of the panel shall be final.

(B) If the hearing is conducted in the absence of a mediator or applicant who submitted a response to the underlying complaint, the DRC shall notify the mediator or applicant that the hearing occurred and whether the matter was dismissed or if sanctions were imposed. The mediator or applicant may petition for rehearing by showing good cause for such absence. A petition for rehearing must be received by the DRC and the prosecutor no later than 10 days from receipt of the DRC notification. The prosecutor shall file a response, if any, within 5 days from receipt of the petition for rehearing. The disposition of the petition shall be decided solely by the chair of the panel and any hearing required by the chair of the panel may be conducted telephonically or by other communication equipment.

(11) Reporting of Proceedings. Any party shall have the right, without any order or approval, to have all or any portion of the testimony in the proceedings reported and transcribed by a court reporter at the party's expense.

(j) Decision of Panel. Upon making a determination that the case shall be dismissed or that the imposition of sanctions or denial of application is appropriate, the panel shall promptly notify the DRC of the decision including factual findings and conclusions signed by the chair of the panel. The DRC shall thereafter promptly mail a copy of the decision to all parties.

(k) Notice to Circuits and Districts. In every case in which a mediator or applicant has had sanctions imposed by agreement or decision, such agreement or decision shall be sent by the DRC to all circuits and districts through the chief judges, all trial and appellate court administrators, the ADR directors, and mediation coordinators.

(l) Publication. Upon the imposition of sanctions, whether by consent of the mediator or applicant and approval by the panel or by decision of the panel after a hearing, the DRC shall publish the name of the mediator or applicant, a summary of the case, a list of the rule or rules which were violated, the circumstances surrounding the violation, and a copy of the decision of the panel. Such publication shall be on the DRC page of the Florida Courts website and in any outside publication at the discretion of the DRC Director.

Rule 10.830 Burden of Proof

(a) Rule Violation. The burden of proof for rule violations other than good moral character is clear and convincing evidence.

(b) Good Moral Character. The burden of proof for any good moral character issue is the preponderance of the evidence.

Rule 10.840 Sanctions

(a) Generally. The mediator or applicant may be sanctioned pursuant to the following:

(1) by agreement with a RVCC or QIC;

(2) by agreement with a panel to the imposition of sanctions; or

(3) by imposition of sanctions by a panel as a result of their deliberations.

(b) Types of Sanctions. Sanctions may include 1 or more of the following:

(1) denial of an application;

(2) oral admonishment;

(3) written reprimand;

(4) additional training, which may include the observation of mediations;

(5) restriction on types of cases which can be mediated in the future;

(6) supervised mediation;

(7) suspension for a period of up to 1 year;

(8) decertification or, if the mediator is not certified, bar from service as a mediator under any rule of court or statute pertaining to certified or court-appointed mediators;

(9) costs incurred prior to, during, and subsequent to the hearing. The specific categories and amounts of such costs are to be decided by the chair of the panel upon submission of costs by the DRC or the prosecutor, and shall include only:

(A) all travel expenses for members of the panel;

(B) all travel expenses for witnesses, prosecutor, panel adviser, and DRC Director or designee;

(C) court reporter fees and transcription;

(D) fees and costs for all investigation services;

(E) telephone/conference call charges;

(F) postage and delivery;

(G) notary charges;

(H) interpretation and translation services; and

(I) copy costs.

(10) any other sanctions as deemed appropriate by the panel.

(c) Failure to Comply With Sanctions.

(1) If there is a reasonable belief that a mediator or applicant failed to comply with any sanction, unless otherwise provided for in the agreement with a RVCC or QIC or the decision of the panel, the DRC may file a motion for contempt with the Contempt/Disqualification Judge of the division in which the sanctions were agreed to or imposed and serve the mediator or applicant with a copy of the motion.

(2) The mediator or applicant shall file a response within 20 days of receipt of the motion for contempt.

(3) If no response is filed, the allegations of the motion are admitted.

(4) The DRC shall thereafter set a hearing with the Contempt/Disqualification Judge and provide notice to the mediator or applicant. The holding of a hearing shall not preclude subsequent hearings on any other alleged failure.

(5) Any sanction in effect at the time that the DRC has a reasonable belief that a violation of the sanctions has occurred shall continue in effect until a decision is reached by the Contempt/Disqualification Judge.

(6) A finding by the Contempt/Disqualification Judge that there was a willful failure to substantially comply with any imposed or agreed-to sanction shall result in the automatic decertification of the mediator for no less than 2 years after which the mediator shall be required to apply as a new applicant.

Rule 10.850 Suspension, Decertification, Denial of Application, and Removal

(a) Suspension. During the period of suspension, compliance with all requirements for certification must be met including, but not limited to, submittal of renewal application, fees and continuing education requirements.

(b) Reinstatement after Suspension. A mediator who has been suspended shall be reinstated as a certified mediator, unless otherwise ineligible, upon the expiration of the suspension period and satisfaction of any additional obligations contained in the sanction document.

(c) Automatic Decertification or Automatic Denial of Application. A mediator or applicant shall automatically be decertified or denied application approval without the need for a hearing upon the following:

(1) Conviction of Felony of Certified Mediator. If the DRC finds that a certified mediator has a felony conviction, the mediator shall automatically be decertified from all certifications and notification and publication of such decertification shall proceed pursuant to rule 10.820(j) and (k). The decertified mediator may not apply for any certification for a period of 2 years or until restoration of civil rights, whichever comes later.

(2) Conviction of Felony of Applicant. If the DRC finds that an applicant for certification has a felony conviction and has not had civil rights restored, the application shall be automatically denied and may not be resubmitted for consideration until restoration of civil rights.

(3) Revocation of Professional License of Certified Mediator. If the DRC finds that a certified mediator has been disbarred from any state or federal bar or has had any professional license revoked, the mediator shall be automatically decertified and cannot reapply for certification for a period of 2 years.

(4) Revocation of Professional License of Applicant. If the DRC finds that an applicant for certification has been disbarred from any state or federal bar or has had any professional license revoked, the applicant shall be automatically denied approval and cannot reapply for certification for a period of 2 years.

(5) Notification and Publication. In the event of an automatic denial of an application or decertification, the DRC shall follow all procedures for notification and publication as stated in rule 10.820(k) and (l).

(d) Decertified Mediators. If a mediator or applicant has been decertified or barred from service pursuant to these rules, the mediator or applicant shall not thereafter be assigned or appointed to mediate a case pursuant to court rule or order or be designated as a mediator by the parties in any court proceeding.

(e) Removal from Supreme Court Committees. If a member of the MQDRB, the ADR Rules and Policy Committee, the Mediator Ethics Advisory Committee, the Mediation Training Review Board, or any supreme court committee related to alternative dispute resolution processes established in the future, is disciplined, suspended, or decertified, the DRC shall immediately remove that member from the committee or board on which the member serves.

(f) Reinstatement after Decertification.

(1) Except if inconsistent with rule 10.110, or subdivision (b) of this rule, a mediator who has been decertified may be reinstated as a certified mediator after application unless the document decertifying the mediator states otherwise.

(2) Unless a greater time period has been imposed by a panel or rule, no application for reinstatement may be submitted prior to 1 year after the date of decertification.

(3) The reinstatement procedures shall be as follows:

(A) A petition for reinstatement shall be made in writing, sworn to by the petitioner, notarized under oath, and filed with the DRC.

(B) The petition shall contain:

(i) a new and current application for mediator certification along with required fees;

(ii) a description of the offense or misconduct upon which the decertification was based, together with the date of such decertification and the case number;

(iii) a copy of the sanction document decertifying the mediator;

(iv) a statement of facts claimed to justify reinstatement as a certified mediator; and

(v) if the period of decertification is 2 years or more, the petitioner shall complete a certified mediation training program of the type for which the petitioner seeks to be reinstated and complete all mentorship and other requirements in effect at the time.

(C) The DRC shall refer the petition for reinstatement to the current QIC.

(D) The QIC shall review the petition for reinstatement. If there are no matters which make the mediator otherwise ineligible and if the petitioner is found to have met the requirements for certification, the QIC shall notify the DRC and the DRC shall reinstate the petitioner as a certified mediator. However, if the decertification was for 2 or more years, reinstatement shall be contingent on the petitioner's completion of a certified mediation training program of the type for which the petitioner seeks to be reinstated.

Rule 10.860 Subpoenas

(a) RVCC or QIC. Subpoenas for the production of documents or other evidence and for the appearance of any person before a RVCC or QIC, or any member thereof, may be issued by the chair of the RVCC or QIC. If the chair is unavailable, the subpoena may be issued by the remaining members of the RVCC or QIC.

(b) Panel. Subpoenas for the attendance of witnesses and the production of documents or other evidence before a panel may be issued by the chair of the panel. If the chair of a panel is unavailable, the subpoena may be issued by the vice-chair.

(c) Service. Subpoenas may be served in any manner provided by law for the service of witness subpoenas in a civil action.

(d) Failure to Obey. Any person who, without good cause shown, fails to obey a duly served subpoena may be cited for contempt in accordance with rule 10.750.

Rule 10.870 Confidentiality

(a) Generally. Until the finding of probable cause, all communications and proceedings shall be confidential. Upon the filing of formal charges, the formal charges and all documents created subsequent to the filing of formal charges shall be public with the exception of those matters which are otherwise confidential under law or rule of the supreme court, regardless of the outcome of any appeal. If a consensual agreement is reached between a mediator or applicant and a RVCC or QIC, only a summary of the allegations and a link or copy of the agreement may be released to the public and placed on the DRC page of the Florida Courts website.

(b) Breach of Confidentiality. Violation of confidentiality by a member of the MQDRB shall subject the member to discipline under these rules and removal from the MQDRB by the chief justice of the Supreme Court of Florida.

Committee Notes

2008 Revision. The recent adoption of the Florida Mediation Confidentiality and Privilege Act, sections 44.401 - 44.406, Florida Statutes, renders the first paragraph of the 1995 Revision Committee Notes inoperative. The second paragraph explains the initial rationale for the rule, which is useful now from a historical standpoint.

1995 Revision. The Committee believed the rule regarding confidentiality should be amended in deference to the 1993 amendment to section 44.102, Florida Statutes, that engrafted an exception to the general confidentiality requirement for all mediation sessions for the purpose of investigating complaints filed against mediators. Section 44.102(4) specifically provides that "the disclosure of an otherwise privileged communication shall be used only for the internal use of the body conducting the investigation" and that "[Prior] to the release of any disciplinary files to the public, all references to otherwise privileged communications shall be deleted from the record."

These provisions created a substantial potential problem when read in conjunction with the previous rule on confidentiality, which made public all proceedings after formal charges were filed. In addition to the possibly substantial burden of redacting the files for public release, there was the potentially greater problem of conducting panel hearings in such a manner as to preclude the possibility that confidential communications would be revealed during testimony, specifically the possibility that any public observers would have to be removed prior to the elicitation of any such communication only to be allowed to return until the next potentially confidential revelation. The Committee believes that under the amended rule the integrity of the disciplinary system can be maintained by releasing the results of any disciplinary action together with a redacted transcript of panel proceedings, while still maintaining the integrity of the mediation process.

Rule 10.880 Disqualification and Removal of Members of a Committee, Panel or Board

(a) Disqualification of Member. A member of the MQDRB is disqualified from serving on a RVCC, QIC or panel involving that member's own discipline or decertification.

(b) Party Request for Disqualification of a MQDRB Member. Any party may move to disqualify a member of the committee or panel before which the case is pending. Factors to be considered include, but are not limited to:

(1) the member or some person related to that member is interested in the result of the case;

(2) the member is related to an attorney or counselor of record in the case; or

(3) the member is a material witness for or against 1 of the parties to the case.

(c) Facts to Be Alleged. Any motion to disqualify shall be in writing, allege the facts relied on to show the grounds for disqualification and shall be made under oath by the moving party.

(d) Time for Motion. A party shall file a motion to disqualify with the DRC not later than 10 days after the movant discovered or reasonably should have discovered the facts which would constitute grounds for disqualification.

(e) Action by Contempt/Disqualification Judge. One of the Contempt/Disqualification Judges shall rule on any motions for disqualification.

(f) Board Member Initiative. A member of any committee or panel may disqualify him/herself on the member's own initiative at any time.

(g) Replacement. Depending on the circumstances, the DRC may replace any disqualified member.

(h) Qualifications for New Member. Each new member serving as a replacement shall have the same qualifications as the disqualified member, but, if needed, may be chosen from a different division of the MQDRB.

Rule 10.890 Limitation on Time to Initiate a Complaint

(a) Rule Violations. Except as otherwise provided in this rule, complaints alleging violations of the Florida Rules for Certified and Court-Appointed Mediators shall not be filed later than 2 years after the date on which the party had a reasonable opportunity to discover the violation, but in no case more than 4 years after the date of the violation.

(b) Felonies. There shall be no limit on the time in which to file a complaint alleging a conviction of a felony by an applicant or mediator.

(c) Good Moral Character. A complaint alleging lack of good moral character in connection with an application under these rules shall not be filed later than 4 years after the date of the discovery by the DRC of the matter(s) evidencing a lack of good moral character.

Rule 10.900 Supreme Court Chief Justice Review

(a) Right of Review. Any mediator or applicant found to have committed a violation of these rules or otherwise sanctioned by a hearing panel shall have a right of review of that action. Review of this type shall be by the chief justice of the Supreme Court of Florida or by the chief justice's designee. A mediator shall have no right of review of any resolution reached under rule 10.800(g) and 10.810(i).

(b) Rules of Procedure. The Florida Rules of Appellate Procedure, to the extent applicable and except as otherwise provided in this rule, shall control all appeals of mediator disciplinary matters.

(1) The jurisdiction to seek review of disciplinary action shall be invoked by filing a Notice of Review of Mediator Disciplinary Action with the clerk of the supreme court within 30 days of the panel's decision. A copy shall be provided to the DRC.

(2) The notice of review shall be substantially in the form prescribed by rule 9.900(a), Florida Rules of Appellate Procedure. A copy of the panel decision shall be attached to the notice.

(3) Appellant's initial brief, accompanied by an appendix as prescribed by rule 9.210, Florida Rules of Appellate Procedure, shall be served within 30 days of submitting the notice of review. Additional briefs shall be served as prescribed by rule 9.210, Florida Rules of Appellate Procedure.

(c) Standard of Review. The review shall be conducted in accordance with the following standard of review:

(1) The chief justice or designee shall review the findings and conclusions of the panel using a competent substantial evidence standard, neither reweighing the evidence in the record nor substituting the reviewer's judgment for that of the panel.

(2) Decisions of the chief justice or designee shall be final upon issuance of a mandate under rule 9.340, Florida Rules of Appellate Procedure.

Rule 10.910 Mediator Ethics Advisory Committee

(a) Scope and Purpose. The Mediator Ethics Advisory Committee shall provide written advisory opinions to mediators subject to these rules in response to ethical questions arising from the Standards of Professional Conduct. Such opinions shall be consistent with supreme court decisions on mediator discipline.

(b) Appointment. The Mediator Ethics Advisory Committee shall be composed of 9 members, 2 from each of the 4 divisions of the Mediator Qualifications and Discipline Review Board and the ninth member from any of the 4 divisions. No member of the Mediator Qualifications and Discipline Review Board shall serve on the committee.

(c) Membership and Terms. The membership of the committee, appointed by the chief justice, shall be composed of 1 county mediator, 1 family mediator, 1 circuit mediator, 1 dependency mediator, 1 appellate mediator and 4 additional members who hold any type of Florida Supreme Court mediator certification. All appointments shall be for 4 years. No member shall serve more than 2 consecutive terms. The committee shall select 1 member as chair and 1 member as vice-chair.

(d) Meetings. The committee shall meet in person or by telephone conference as necessary at the direction of the chair to consider requests for advisory opinions. A quorum shall consist of a majority of the members appointed to the committee. All requests for advisory opinions shall be in writing. The committee may vote by any means as directed by the chair.

(e) Opinions. Upon due deliberation, and upon the concurrence of a majority of the committee, the committee shall render opinions. A majority of all members shall be required to concur in any advisory opinion issued by the committee. The opinions shall be signed by the chair, or vice-chair in the absence of the chair, filed with the Dispute Resolution Center, published by the Dispute Resolution Center, in its newsletter, or by posting on the DRC website, and be made available upon request.

(f) Effect of Opinions. While reliance by a mediator on an opinion of the committee shall not constitute a defense in any disciplinary proceeding, it shall be evidence of good faith and may be considered by the board in relation to any determination of guilt or in mitigation of punishment.

(g) Confidentiality. Prior to publication, all references to the requesting mediator or any other real person, firm, organization, or corporation shall be deleted from any request for an opinion, any document associated with the preparation of an opinion, and any opinion issued by the committee. This rule shall apply to all opinions, past and future.

(h) Support. The Dispute Resolution Center shall provide all support necessary for the committee to fulfill its duties under these rules.

Committee Notes

2000 Revision. The Mediator Ethics Advisory Committee was formerly the Mediator Qualifications Advisory Panel.

2000 Amendment. The reference to the statute of repose was added to subdivision (d)(1) pursuant to *Musculoskeletal Institute Chartered v. Parham*, 745 So.2d 946 (Fla. 1999).

RULE 1.700. RULES COMMON TO MEDIATION AND ARBITRATION

(a) Referral by Presiding Judge or by Stipulation. Except as hereinafter provided or as otherwise prohibited by law, the presiding judge may enter an order referring all or any part of a contested civil matter to mediation or arbitration. The parties to any contested civil matter may file a written stipulation to mediate or arbitrate any issue between them at any time. The order of referral or written stipulation may provide for mediation or arbitration to be conducted in person, through the use of communication technology as that term is defined in Florida Rule of General Practice and Judicial Administration 2.530, or by a combination thereof. Absent direction in the order of referral, mediation or arbitration must be conducted in person, unless the parties stipulate or the court, on its own motion or on motion by a party, otherwise orders that the proceeding be conducted by communication technology or by a combination of communication technology and in-person participation.

(1) *Conference or Hearing Date.* Unless otherwise ordered by the court, the first mediation conference or arbitration hearing must be held within 60 days of the order of referral.

(2) *Notice.* Within 15 days after the designation of the mediator or the arbitrator, the court or its designee, who may be the mediator or the chief arbitrator, must notify the parties in writing of the date, the time, and, as applicable, the place of the conference or hearing and the instructions for access to communication technology that will be used for the conference or hearing, unless the order of referral, other order of the court or written stipulation specifies this information.

(b) Motion to Dispense with Mediation and Arbitration. A party may move, within 15 days after the order of referral, to dispense with mediation or arbitration, if:

(1) the issue to be considered has been previously mediated or arbitrated between the same parties pursuant to Florida law;

(2) the issue presents a question of law only;

(3) the order violates rule 1.710(b) or rule 1.800; or

(4) other good cause is shown.

(c) Motion to Defer Mediation or Arbitration. Within 15 days of the order of referral, any party may file a motion with the court to defer the proceeding. The movant shall set the motion to defer for hearing prior to the scheduled date for mediation or arbitration. Notice of the hearing shall be provided to all interested parties, including any mediator or arbitrator who has been appointed. The 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) Disqualification of a Mediator or Arbitrator. Any party may move to enter an order disqualifying a mediator or an arbitrator for good cause. 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 preclude mediators or arbitrators from disqualifying themselves or refusing any assignment. The time for mediation or arbitration shall be tolled during any periods in which a motion to disqualify is pending.

RULE 1.710. MEDIATION RULES

(a) Completion of Mediation. Mediation shall be completed within 45 days of the first mediation conference unless extended by order of the court or by stipulation of the parties.

(b) Exclusions from Mediation. A civil action shall be ordered to mediation or mediation in conjunction with arbitration upon stipulation of the parties. A civil action may be ordered to mediation or mediation in conjunction with arbitration upon motion

of any party or by the court, if the judge determines the action to be of such a nature that mediation could be of benefit to the litigants or the court. Under no circumstances may the following categories of actions be referred to mediation:

(1) Bond estreatures.

(2) Habeas corpus and extraordinary writs.

(3) Bond validations.

(4) Civil or criminal contempt.

(5) Other matters as may be specified by administrative order of the chief judge in the circuit.

(c) Discovery. Unless stipulated by the parties or ordered by the court, the mediation process shall not suspend discovery.

Committee Notes

1994 Amendment. The Supreme Court Committee on Mediation and Arbitration Rules encourages crafting a combination of dispute resolution processes without creating an unreasonable barrier to the traditional court system.

RULE 1.720. MEDIATION PROCEDURES

(a) Interim or Emergency Relief. A party may apply to the court for interim or emergency relief at any time. Mediation shall continue while such a 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 when mediation is interrupted pending resolution of such a motion.

(b) Appearance at Mediation. A party is deemed to appear at a mediation conference if the following persons are physically present, or if authorized under rule 1.700(a), participating through the use of communication technology:

(1) The party or a party representative having full authority to settle without further consultation; and

(2) The party's counsel of record, if any; and

(3) A representative of the insurance carrier for any insured party who is not such carrier's outside counsel and who has full authority to settle in an amount up to the amount of the plaintiff's last demand or policy limits, whichever is less, without further consultation.

(c) Party Representative Having Full Authority to Settle. A "party representative having full authority to settle" shall mean the final decision maker with respect to all issues presented by the case who has the legal capacity to execute a binding settlement agreement on behalf of the party. Nothing herein shall be deemed to require any party or party representative who appears at a mediation conference in compliance with this rule to enter into a settlement agreement.

(d) Appearance by Public Entity. If a party to mediation is a public entity required to operate in compliance with chapter 286, Florida Statutes, that party is deemed to appear at a mediation conference by the presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body of the entity. Such representative may be physically present or, if authorized under rule 1.700 (a), may participate through the use of communication technology.

(e) Certification of Authority. Unless otherwise stipulated by the parties, each party, 10 days prior to appearing at a mediation conference, must file with the court and serve all parties a written notice identifying the person or persons who will appear at the mediation conference as a party representative or as an insurance carrier representative, and confirming that those persons have the authority required by subdivision (b).

(f) Sanctions for Failure to Appear. If a party fails to appear at a duly noticed mediation conference without good cause,

the court, upon motion, shall impose sanctions, including award of mediation fees, attorneys' fees, and costs, against the party failing to appear. The failure to file a confirmation of authority required under subdivision (e) above, or failure of the persons actually identified in the confirmation to appear at the mediation conference, shall create a rebuttable presumption of a failure to appear.

(g) Adjournments. The mediator may adjourn the mediation conference at any time and may set times for reconvening the adjourned conference notwithstanding rule 1.710(a). No further notification is required for parties present at the adjourned conference.

(h) Counsel. The mediator shall at all times be in control of the mediation and the procedures to be followed in the mediation. Counsel shall be permitted to communicate privately with their clients. In the discretion of the mediator and with the agreement of the parties, mediation may proceed in the absence of counsel unless otherwise ordered by the court.

(i) Communication with Parties or Counsel. The mediator may meet and consult privately with any party or parties or their counsel.

(j) Appointment of the Mediator.

(1) Within 10 days of the order of referral, the parties may agree upon a stipulation with the court designating:

(A) a certified mediator, other than a senior judge presiding over civil cases as a judge in that circuit; or

(B) a mediator, other than a senior judge, who is not certified as a mediator but who, in the opinion of the parties and upon review by the presiding judge, is otherwise qualified by training or experience to mediate all or some of the issues in the particular case.

(2) If the parties cannot agree upon a mediator within 10 days of the order of referral, the plaintiff or petitioner shall so

notify the court within 10 days of the expiration of the period to agree on a mediator, and the court shall appoint a certified mediator selected by rotation or by such other procedures as may be adopted by administrative order of the chief judge in the circuit in which the action is pending. At the request of either party, the court shall appoint a certified circuit court mediator who is a member of The Florida Bar.

(3) If a mediator agreed upon by the parties or appointed by a court cannot serve, a substitute mediator can be agreed upon or appointed in the same manner as the original mediator. A mediator shall not mediate a case assigned to another mediator without the agreement of the parties or approval of the court. A substitute mediator shall have the same qualifications as the original mediator.

(k) Compensation of the Mediator. The mediator may be compensated or uncompensated. When the mediator is compensated in whole or part by the parties, the presiding judge may determine the reasonableness of the fees charged by the mediator. In the absence of a written agreement providing for the mediator's compensation, 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. Parties may object to the rate of the mediator's compensation within 15 days of the order of referral by serving an objection on all other parties and the mediator.

Committee Notes

2011 Amendment. Mediated settlement conferences pursuant to this rule are meant to be conducted when the participants actually engaged in the settlement negotiations have full authority to settle the case without further consultation. New language in subdivision (c) now defines "a party representative with full authority to settle" in two parts. First, the party representative must be the final decision maker with respect to all issues presented by the case in question. Second, the party representative must have the legal capacity to execute a binding agreement on behalf of the settling party. These are objective standards. Whether or not these

standards have been met can be determined without reference to any confidential mediation communications. A decision by a party representative not to settle does not, in and of itself, signify the absence of full authority to settle. A party may delegate full authority to settle to more than one person, each of whom can serve as the final decision maker. A party may also designate multiple persons to serve together as the final decision maker, all of whom must appear at mediation.

New subdivision (e) provides a process for parties to identify party representative and representatives of insurance carriers who will be attending the mediation conference on behalf of parties and insurance carriers and to confirm their respective settlement authority by means of a direct representation to the court. If necessary, any verification of this representation would be upon motion by a party or inquiry by the court without involvement of the mediator and would not require disclosure of confidential mediation communications. Nothing in this rule shall be deemed to impose any duty or obligation on the mediator selected by the parties or appointed by the court to ensure compliance.

The concept of self determination in mediation also contemplates the parties' free choice in structuring and organizing their mediation sessions, including those who are to participate. Accordingly, elements of this rule are subject to revision or qualification with the mutual consent of the parties.

RULE 1.730. COMPLETION OF MEDIATION

(a) No Agreement. If the parties do not reach an agreement as to any matter as a result of mediation, the mediator shall report the lack of an agreement to the court without comment or recommendation. With the consent of the parties, the mediator's report may also identify any pending motions or outstanding legal issues, discovery process, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement.

(b) Agreement. If a partial or final agreement is reached, it must be reduced to writing and signed by the parties and their

counsel, if any. Signatures may be original, electronic, or facsimile and may be in counterparts. The agreement must be filed when required by law or with the parties' consent. A report of the agreement must be submitted to the court or a stipulation of dismissal will be filed. By stipulation of the parties, the agreement may be transcribed or electronically recorded. In such event, the transcript may be filed with the court. The mediator must report the existence of the signed or transcribed agreement to the court without comment within 10 days thereof. No partial or final agreement under this rule may be reported to the court except as provided herein.

(c) Enforceability. The parties may not object to the enforceability of an agreement on the ground that communication technology was used for participation in the mediation conference if such use was authorized under rule 1.700(a).

(d) Imposition of Sanctions. In the event of any breach or failure to perform under the agreement, the court upon motion may impose sanctions, including costs, attorneys' fees, or other appropriate remedies including entry of judgment on the agreement.

Committee Notes

1996 Amendment. Subdivision (b) is amended to provide for partial settlements, to clarify the procedure for concluding mediation by report or stipulation of dismissal, and to specify the procedure for reporting mediated agreements to the court. The reporting requirements are intended to ensure the confidentiality provided for in section 44.102(3), Florida Statutes, and to prevent premature notification to the court.

RULE 1.750. COUNTY COURT ACTIONS

(a) Applicability. This rule applies to the mediation of county court matters and issues only and controls over conflicting provisions in rules 1.700, 1.710, 1.720, and 1.730.

(b) Limitation on Referral to Mediation. When a mediation program utilizing volunteer mediators is unavailable or otherwise inappropriate, county court matters may be referred to a mediator or mediation program which charges a fee. Such order of referral shall advise the parties that they may object to mediation on grounds of financial hardship or on any ground set forth in rule 1.700(b). If a party objects, mediation shall not be conducted until the court rules on the objection. The court may consider the amount in controversy, the objecting party's ability to pay, and any other pertinent information in determining the propriety of the referral. When appropriate, the court shall apportion mediation fees between the parties.

(c) Scheduling. In small claims actions, 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.

(d) Appointment of the Mediator. In county court actions not subject to the Florida Small Claims Rules, rule 1.720(f) shall apply unless the case is sent to a mediation program provided at no cost to the parties.

(e) Appearance at Mediation. In small claims actions, an attorney may appear on behalf of a party at mediation provided that the attorney has full authority to settle without further consultation. Unless otherwise ordered by the court, a nonlawyer representative may appear on behalf of a party to a small claims mediation if the representative has the party's signed written authority to appear and has full authority to settle without further consultation. In either event, the party need not appear in person. In any other county court action, a party will be deemed to appear if the persons set forth in rule 1.720(b) are physically present or, if authorized under rule 1.700(a), participating through the use of communication technology.

(f) Agreement. Any agreements reached as a result of small claims mediation must be written in the form of a stipulation. The stipulation may be entered as an order of the court. Signatures for

the stipulation may be original, electronic, or facsimile and may be in counterparts.

RULE 1.800. EXCLUSIONS FROM ARBITRATION

A civil action shall be ordered to arbitration or arbitration in conjunction with mediation upon stipulation of the parties. A civil action may be ordered to arbitration or arbitration in conjunction with mediation upon motion of any party or by the court, if the judge determines the action to be of such a nature that arbitration could be of benefit to the litigants or the court. Under no circumstances may the following categories of actions be referred to arbitration:

(1) Bond estreatures.

(2) Habeas corpus or other extraordinary writs.

(3) Bond validations.

(4) Civil or criminal contempt.

(5) Such other matters as may be specified by order of the chief judge in the circuit.

Committee Notes

1994 Amendment. The Supreme Court Committee on Mediation and Arbitration Rules encourages crafting a combination of dispute resolution processes without creating an unreasonable barrier to the traditional court system.

RULE 1.810. SELECTION AND COMPENSATION OF ARBITRATORS

(a) Selection. The chief judge of the circuit or a 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 3 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

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About ADR & Mediation

Alternative dispute resolution (ADR) has been utilized by the Florida Court System to resolve disputes for over 30 years, starting with the creation of the first citizen dispute settlement (CDS) center in Dade County in 1975. ADR processes offer litigants court-connected opportunities to resolve their disputes without judicial intervention. In Florida, this has resulted in one of the most comprehensive court-connected mediation programs in the country. The Florida Dispute Resolution Center (DRC) was created during the mid 1980's to provide assistance to the courts in developing ADR programs and to conduct education and research on ADR in general.

On January 1, 1988, comprehensive revisions to Chapter 44, Florida Statutes, entitled "Mediation Alternatives to Judicial Action," were implemented. This 1987 legislation granted civil trial judges the statutory authority to refer cases to mediation or arbitration, subject to rules and procedures established by the Supreme Court of Florida. Since then, the statute has been revised several times and procedural rules, certification qualifications, ethical standards, grievance procedures, training standards, and continuing education requirements for mediators have been implemented.

The Florida State Court System consists of 20 judicial circuits that encompass Florida's 67 counties. Prior to July 2004, ADR programs in Florida were funded by the counties. This resulted in great variations of ADR services across the state. Generally, single county circuits provided litigants with access to a wide variety of ADR programs; while in multi-county circuits, ADR services were offered in some, but not all of the counties; thereby leaving some counties with no services. In a constitutional amendment implemented on July 1, 2004, the funding for the state court system became the responsibility of the state. The goal was for litigants to have generally uniform access to "essential" services regardless of where they live in the state. Included among those "essential" services are court-connected mediation and arbitration.

The Supreme Court of Florida, through the DRC, offers certification for mediators in the areas of county court, family, circuit court, dependency and appellate cases. In most cases, parties select the mediator of their own choice. However, certified mediators may receive appointments from the court when the litigants are unable to select their own mediator. Certified mediators and those individuals who are not certified but who mediate court-ordered cases are bound by the ethical standards contained in the Florida Rules for Certified and Court-Appointed Mediators . Mediators renew their certification every two years and must complete 16 hours of continuing mediator education applicable to each area of certification. The Supreme Court does not certify arbitrators; however, court-appointed arbitrators are bound by the Florida Rules for Court-Appointed Arbitrators .

As of January 2021, there were 5,513 individuals certified as mediators. The breakdown by certification is as follows:

- 1,927 certified county mediators
- 2,199 certified family mediators
- 3,144 certified circuit mediators
- 211 certified dependency mediators
- 431 certified appellate mediators

In an effort to keep pace with this rapidly evolving field, the Supreme Court of Florida has created five standing ADR Committees/Boards. All of the Committees/Boards are staffed by the DRC:

- The Florida Supreme Court Committee on Alternative Dispute Resolution Rules & Policy (ADR R&P) is charged with monitoring and making recommendations to improve and expand the use of court-connected ADR (not limited to mediation) through the

recommendation of the adoption of statutes, rules, policies, and procedures;

- The Mediator Ethics Advisory Committee (MEAC) issues formal advisory ethics opinions to certified and court-appointed mediators. These opinions are posted on the DRC website for use by mediators as well as courts, attorneys and the general public;
- The Mediator Qualifications and Discipline Review Board (MQDRB) is responsible for hearing grievances filed against certified mediators for violations of the ethical standards and reviewing mediator good moral character issues;
- The Mediation Training Review Board (MTRB) reviews complaints against certified mediation training programs and training program principals;
- The Parenting Coordinator Review Board (PCRB) was appointed in 2016 to consider complaints against Qualified and Court-Appointed Parenting Coordinators. The twenty members include judges, attorneys and parenting coordinators from across the state.

In addition to the state court-ordered mediation and arbitration cases, there are a variety of other ADR programs operating successfully. Summary jury trials are utilized on an ad hoc basis in some circuits and the federal courts utilize both mediation and arbitration. There are numerous state ADR statutes and successful ADR programs through the Department of Insurance, the Division of Mobile Homes of the Department of Business and Professional Regulation, and the Workers Compensation Division of the Department of Labor and Employment Security, to name just a few.

Contact

For additional information please contact The Dispute Resolution Center at 850-921-2910 or at DRCMail@flcourts.org.

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Mediator Qualifications & Discipline Review Board (MQDRB)

The Mediator Qualifications & Discipline Review Board (MQDRB) is the body responsible for the speedy investigation and disposition of any complaint submitted under the Florida Rules for Certified and Court-Appointed Mediators. The MQDRB is comprised of 17 to 21 members from each of the four Divisions in Florida, for a total of 68 to 84 members. The members include judges, county mediators, family mediators, circuit mediators, dependency mediators, appellate mediators and non-mediator attorneys. The bulk of the MQDRB's work is accomplished through complaint committees and hearing panels when complaints are filed against certified or court-appointed mediators. Additionally, the MQDRB's four-member Qualifications Inquiry Committee (QIC) is responsible for the investigation and disposition of good moral character issues presented by applications for initial or renewal certification.

THERE ARE NO VACANCIES AT THIS TIME

Mediator Ethics Advisory Committee (MEAC)

The Mediator Ethics Advisory Committee (MEAC) was appointed in 1994. The nine-member committee issues written advisory ethics opinions for mediators subject to the Florida Rules for Certified and Court-Appointed Mediators . See rule 10.910. For the benefit of all mediators, the opinions are available on the Florida Courts' web page.

THERE ARE NO VACANCIES AT THIS TIME

Parenting Coordinator Review Board (PCRB)

The Parenting Coordinator Review Board (PCRB) considers complaints against qualified and court-appointed parenting coordinators. The PCRB's twenty members include judges, parenting coordinators and non-parenting coordinator attorneys from across the state who meet in complaint committees and hearing panels when grievances are filed against qualified or court-appointed parenting coordinators. Appointments are made by the Chief Justice of the Supreme Court of Florida for four-year terms. The members may be from any geographic area of the state.

THERE ARE NO VACANCIES AT THIS TIME

The Alternative Dispute Resolution (ADR) Rules and Policy Committee

The committee provides the Supreme Court with recommendations relating to ADR legislation, and all aspects of ADR policy and rules including, but not limited to, model ADR practices, mediator certification and renewal requirements, continuing education requirements, and mediation training program requirements.

THERE ARE NO VACANCIES AT THIS TIME

INVESTIGATOR

- Function: Conducts fact-finding and investigates the allegations contained in the complaint and the mediator's response. The investigator reports the results of such investigation to the complaint committee in writing and orally upon request. May be asked to prepare formal charges.
- Qualifications: Licensure as an attorney with investigative experience or at least 3 years experience as an investigator in any administrative, civil or criminal proceedings.
- Compensation: Investigators are retained on an as needed basis. Resumes are kept on file. Initial appointment: $100.00/hour; $150.00/hour thereafter.

PROSECUTOR (Counsel)

- Function: Investigating and prosecuting the complaint to the hearing panel. Prosecutor does not serve as counsel to the complainant. May also perform investigative functions as necessary.
- Qualifications: Membership in The Florida Bar with a minimum of three years legal experience and experience prosecuting or defending grievances or criminal matters.
- Compensation: Initial Appointment: $150/hour; $200.00/hour thereafter. Prosecutors are appointed on an as needed basis. Resumes are kept on file.

If you are qualified, please submit a letter of interest and a current resume to:

Florida Dispute Resolution Center
Supreme Court Building
500 South Duval Street
Tallahassee, Florida 32399
Attn: DRC Staff Attorney

Alternative Dispute Resolution

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Mediator Ethics Advisory Committee Opinions (MEAC)

The MEAC considers written questions (via email or formal letter) related to certified and court-appointed mediators who are subject to the Florida Rules for Certified and Court-Appointed Mediators (see Rule 10.910). Please provide as much detail with your question and please include the rules you believe may be impacted by your question. Written opinions typically take 90-120 days and are posted on the DRC's website for the benefit of all mediators.

Send your mediator ethical question to:

Florida Dispute Resolution Center
Supreme Court Building
500 S. Duval Street
Tallahassee, Florida 32399
Email: DRCmail@flcourts.org

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PLEASE NOTE: It is important that the entire MEAC opinion is read in order to gain a thorough understanding of the opinion and the facts upon which it was based.

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Contact

For additional information please contact The Dispute Resolution Center at 850-921-2910 or at DRCmail@flcourts.org.

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Public Law 105–315
105th Congress

An Act

To amend title 28, United States Code, with respect to the use of alternative dispute resolution processes in United States district courts, and for other purposes

Oct. 30, 1998
[H.R. 3528]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Alternative Dispute Resolution Act of 1998.
28 USC 1 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Alternative Dispute Resolution Act of 1998".

28 USC 651 note.

SEC. 2. FINDINGS AND DECLARATION OF POLICY.

Congress finds that—

(1) alternative dispute resolution, when supported by the bench and bar, and utilizing properly trained neutrals in a program adequately administered by the court, has the potential to provide a variety of benefits, including greater satisfaction of the parties, innovative methods of resolving disputes, and greater efficiency in achieving settlements;

(2) certain forms of alternative dispute resolution, including mediation, early neutral evaluation, minitrials, and voluntary arbitration, may have potential to reduce the large backlog of cases now pending in some Federal courts throughout the United States, thereby allowing the courts to process their remaining cases more efficiently; and

(3) the continued growth of Federal appellate court-annexed mediation programs suggests that this form of alternative dispute resolution can be equally effective in resolving disputes in the Federal trial courts; therefore, the district courts should consider including mediation in their local alternative dispute resolution programs.

SEC. 3. ALTERNATIVE DISPUTE RESOLUTION PROCESSES TO BE AUTHORIZED IN ALL DISTRICT COURTS.

Section 651 of title 28, United States Code, is amended to read as follows:

"§ 651. Authorization of alternative dispute resolution

"(a) DEFINITION.—For purposes of this chapter, an alternative dispute resolution process includes any process or procedure, other than an adjudication by a presiding judge, in which a neutral third party participates to assist in the resolution of issues in controversy, through processes such as early neutral evaluation, mediation, minitrial, and arbitration as provided in sections 654 through 658.

"(b) AUTHORITY.—Each United States district court shall authorize, by local rule adopted under section 2071(a), the use of alternative dispute resolution processes in all civil actions, including adversary proceedings in bankruptcy, in accordance with this chapter, except that the use of arbitration may be authorized only as provided in section 654. Each United States district court shall devise and implement its own alternative dispute resolution program, by local rule adopted under section 2071(a), to encourage and promote the use of alternative dispute resolution in its district.

"(c) EXISTING ALTERNATIVE DISPUTE RESOLUTION PROGRAMS.—In those courts where an alternative dispute resolution program is in place on the date of the enactment of the Alternative Dispute Resolution Act of 1998, the court shall examine the effectiveness of that program and adopt such improvements to the program as are consistent with the provisions and purposes of this chapter.

"(d) ADMINISTRATION OF ALTERNATIVE DISPUTE RESOLUTION PROGRAMS.—Each United States district court shall designate an employee, or a judicial officer, who is knowledgeable in alternative dispute resolution practices and processes to implement, administer, oversee, and evaluate the court's alternative dispute resolution program. Such person may also be responsible for recruiting, screening, and training attorneys to serve as neutrals and arbitrators in the court's alternative dispute resolution program.

"(e) TITLE 9 NOT AFFECTED.—This chapter shall not affect title 9, United States Code.

"(f) PROGRAM SUPPORT.—The Federal Judicial Center and the Administrative Office of the United States Courts are authorized to assist the district courts in the establishment and improvement of alternative dispute resolution programs by identifying particular practices employed in successful programs and providing additional assistance as needed and appropriate.".

SEC. 4. JURISDICTION.

Section 652 of title 28, United States Code, is amended to read as follows:

"§ 652. Jurisdiction

"(a) CONSIDERATION OF ALTERNATIVE DISPUTE RESOLUTION IN APPROPRIATE CASES.—Notwithstanding any provision of law to the contrary and except as provided in subsections (b) and (c), each district court shall, by local rule adopted under section 2071(a), require that litigants in all civil cases consider the use of an alternative dispute resolution process at an appropriate stage in the litigation. Each district court shall provide litigants in all civil cases with at least one alternative dispute resolution process, including, but not limited to, mediation, early neutral evaluation, minitrial, and arbitration as authorized in sections 654 through 658. Any district court that elects to require the use of alternative dispute resolution in certain cases may do so only with respect to mediation, early neutral evaluation, and, if the parties consent, arbitration.

"(b) ACTIONS EXEMPTED FROM CONSIDERATION OF ALTERNATIVE DISPUTE RESOLUTION.—Each district court may exempt from the requirements of this section specific cases or categories of cases in which use of alternative dispute resolution would not be appropriate. In defining these exemptions, each district court shall consult

with members of the bar, including the United States Attorney for that district.

"(c) AUTHORITY OF THE ATTORNEY GENERAL.—Nothing in this section shall alter or conflict with the authority of the Attorney General to conduct litigation on behalf of the United States, with the authority of any Federal agency authorized to conduct litigation in the United States courts, or with any delegation of litigation authority by the Attorney General.

"(d) CONFIDENTIALITY PROVISIONS.—Until such time as rules are adopted under chapter 131 of this title providing for the confidentiality of alternative dispute resolution processes under this chapter, each district court shall, by local rule adopted under section 2071(a), provide for the confidentiality of the alternative dispute resolution processes and to prohibit disclosure of confidential dispute resolution communications.".

SEC. 5. MEDIATORS AND NEUTRAL EVALUATORS.

Section 653 of title 28, United States Code, is amended to read as follows:

"§ 653. Neutrals

"(a) PANEL OF NEUTRALS.—Each district court that authorizes the use of alternative dispute resolution processes shall adopt appropriate processes for making neutrals available for use by the parties for each category of process offered. Each district court shall promulgate its own procedures and criteria for the selection of neutrals on its panels.

"(b) QUALIFICATIONS AND TRAINING.—Each person serving as a neutral in an alternative dispute resolution process should be qualified and trained to serve as a neutral in the appropriate alternative dispute resolution process. For this purpose, the district court may use, among others, magistrate judges who have been trained to serve as neutrals in alternative dispute resolution processes, professional neutrals from the private sector, and persons who have been trained to serve as neutrals in alternative dispute resolution processes. Until such time as rules are adopted under chapter 131 of this title relating to the disqualification of neutrals, each district court shall issue rules under section 2071(a) relating to the disqualification of neutrals (including, where appropriate, disqualification under section 455 of this title, other applicable law, and professional responsibility standards).".

SEC. 6. ACTIONS REFERRED TO ARBITRATION.

Section 654 of title 28, United States Code, is amended to read as follows:

"§ 654. Arbitration

"(a) REFERRAL OF ACTIONS TO ARBITRATION.—Notwithstanding any provision of law to the contrary and except as provided in subsections (a), (b), and (c) of section 652 and subsection (d) of this section, a district court may allow the referral to arbitration of any civil action (including any adversary proceeding in bankruptcy) pending before it when the parties consent, except that referral to arbitration may not be made where—

"(1) the action is based on an alleged violation of a right secured by the Constitution of the United States;

"(2) jurisdiction is based in whole or in part on section 1343 of this title; or

"(3) the relief sought consists of money damages in an amount greater than $150,000.

"(b) SAFEGUARDS IN CONSENT CASES.—Until such time as rules are adopted under chapter 131 of this title relating to procedures described in this subsection, the district court shall, by local rule adopted under section 2071(a), establish procedures to ensure that any civil action in which arbitration by consent is allowed under subsection (a)—

"(1) consent to arbitration is freely and knowingly obtained; and

"(2) no party or attorney is prejudiced for refusing to participate in arbitration.

"(c) PRESUMPTIONS.—For purposes of subsection (a)(3), a district court may presume damages are not in excess of $150,000 unless counsel certifies that damages exceed such amount.

"(d) EXISTING PROGRAMS.—Nothing in this chapter is deemed to affect any program in which arbitration is conducted pursuant to section title IX of the Judicial Improvements and Access to Justice Act (Public Law 100–702), as amended by section 1 of Public Law 105–53.".

SEC. 7. ARBITRATORS.

Section 655 of title 28, United States Code, is amended to read as follows:

"§ 655. Arbitrators

"(a) POWERS OF ARBITRATORS.—An arbitrator to whom an action is referred under section 654 shall have the power, within the judicial district of the district court which referred the action to arbitration—

"(1) to conduct arbitration hearings;

"(2) to administer oaths and affirmations; and

"(3) to make awards.

"(b) STANDARDS FOR CERTIFICATION.—Each district court that authorizes arbitration shall establish standards for the certification of arbitrators and shall certify arbitrators to perform services in accordance with such standards and this chapter. The standards shall include provisions requiring that any arbitrator—

"(1) shall take the oath or affirmation described in section 453; and

"(2) shall be subject to the disqualification rules under section 455.

"(c) IMMUNITY.—All individuals serving as arbitrators in an alternative dispute resolution program under this chapter are performing quasi-judicial functions and are entitled to the immunities and protections that the law accords to persons serving in such capacity.".

SEC. 8. SUBPOENAS.

Section 656 of title 28, United States Code, is amended to read as follows:

"§ 656. Subpoenas

"Rule 45 of the Federal Rules of Civil Procedure (relating to subpoenas) applies to subpoenas for the attendance of witnesses and the production of documentary evidence at an arbitration hearing under this chapter.".

SEC. 9. ARBITRATION AWARD AND JUDGMENT.

Section 657 of title 28, United States Code, is amended to read as follows:

"§ 657. Arbitration award and judgment

"(a) FILING AND EFFECT OF ARBITRATION AWARD.—An arbitration award made by an arbitrator under this chapter, along with proof of service of such award on the other party by the prevailing party or by the plaintiff, shall be filed promptly after the arbitration hearing is concluded with the clerk of the district court that referred the case to arbitration. Such award shall be entered as the judgment of the court after the time has expired for requesting a trial de novo. The judgment so entered shall be subject to the same provisions of law and shall have the same force and effect as a judgment of the court in a civil action, except that the judgment shall not be subject to review in any other court by appeal or otherwise.

"(b) SEALING OF ARBITRATION AWARD.—The district court shall provide, by local rule adopted under section 2071(a), that the contents of any arbitration award made under this chapter shall not be made known to any judge who might be assigned to the case until the district court has entered final judgment in the action or the action has otherwise terminated.

"(c) TRIAL DE NOVO OF ARBITRATION AWARDS.—

"(1) TIME FOR FILING DEMAND.—Within 30 days after the filing of an arbitration award with a district court under subsection (a), any party may file a written demand for a trial de novo in the district court.

"(2) ACTION RESTORED TO COURT DOCKET.—Upon a demand for a trial de novo, the action shall be restored to the docket of the court and treated for all purposes as if it had not been referred to arbitration.

"(3) EXCLUSION OF EVIDENCE OF ARBITRATION.—The court shall not admit at the trial de novo any evidence that there has been an arbitration proceeding, the nature or amount of any award, or any other matter concerning the conduct of the arbitration proceeding, unless—

"(A) the evidence would otherwise be admissible in the court under the Federal Rules of Evidence; or

"(B) the parties have otherwise stipulated.".

SEC. 10. COMPENSATION OF ARBITRATORS AND NEUTRALS.

Section 658 of title 28, United States Code, is amended to read as follows:

"§ 658. Compensation of arbitrators and neutrals

"(a) COMPENSATION.—The district court shall, subject to regulations approved by the Judicial Conference of the United States, establish the amount of compensation, if any, that each arbitrator or neutral shall receive for services rendered in each case under this chapter.

"(b) TRANSPORTATION ALLOWANCES.—Under regulations prescribed by the Director of the Administrative Office of the United States Courts, a district court may reimburse arbitrators and other neutrals for actual transportation expenses necessarily incurred in the performance of duties under this chapter.". Regulations.

28 USC 651 note.

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out chapter 44 of title 28, United States Code, as amended by this Act.

SEC. 12. CONFORMING AMENDMENTS.

(a) LIMITATION ON MONEY DAMAGES.—Section 901 of the Judicial Improvements and Access to Justice Act (28 U.S.C. 652 note), is amended by striking subsection (c).

(b) OTHER CONFORMING AMENDMENTS.—(1) The chapter heading for chapter 44 of title 28, United States Code, is amended to read as follows:

"CHAPTER 44—ALTERNATIVE DISPUTE RESOLUTION".

(2) The table of contents for chapter 44 of title 28, United States Code, is amended to read as follows:

"Sec.
"651. Authorization of alternative dispute resolution.
"652. Jurisdiction.
"653. Neutrals.
"654. Arbitration.
"655. Arbitrators.
"656. Subpoenas.
"657. Arbitration award and judgment.
"658. Compensation of arbitrators and neutrals.".

(3) The item relating to chapter 44 in the table of chapters for Part III of title 28, United States Code, is amended to read as follows:

"44. Alternative Dispute Resolution ..... **651".**

Approved October 30, 1998.

LEGISLATIVE HISTORY—H.R. 3528:

HOUSE REPORTS: No. 105–487 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 144 (1998):
Apr. 21, considered and passed House.
Oct. 7, considered and passed Senate, amended.
Oct. 10, House concurred in Senate amendments.

○

LOCAL RULES

United States District Court

for the

Southern District of Florida

Revised December 1, 2022

RULE 16.2 COURT ANNEXED MEDIATION

(a) General Provisions.

(1) *Definitions*. Mediation is a supervised settlement conference presided over by a qualified, certified, and neutral mediator, or anyone else whom the parties agree upon to serve as a mediator, to promote conciliation, compromise and the ultimate settlement of a civil action.

A certified mediator is an attorney, certified by the Chief Judge in accordance with these Local Rules, who possesses the unique skills required to facilitate the mediation process including the ability to suggest alternatives, analyze issues, question perceptions, use logic, conduct private caucuses, stimulate negotiations between opposing sides, and keep order.

The mediation process does not allow for testimony of witnesses. The mediator does not review or rule upon questions of fact or law, or render any final decision in the case. The mediator will report to the Court only: (i) whether the case settled (in full or in part) or was adjourned for further mediation; (ii) whether the mediator declared an impasse; (iii) whether the mediation was conducted in person or by video-conference; and (iv) pursuant to Local Rule 16.2(e), whether any party failed to participate in the mediation.

(2) Format. Unless the Court orders otherwise, the parties shall decide whether their mediation conference will be conducted in person or by video-conference and, if the parties cannot agree, the mediation conference shall be held by video-conference.

(b) Certification; Qualification of Certified Mediators; Compensation of Mediators.

(1) *Certification of Mediators*. The Chief Judge shall certify those persons who are eligible and qualified to serve as mediators under this Local Rule, in such numbers as the Chief Judge shall deem appropriate. Thereafter, the Chief Judge shall have complete discretion and authority to withdraw the certification of any mediator at any time.

(2) L*ists of Certified Mediators*. Lists of certified mediators shall be maintained in the offices of the Clerk of the Court and shall be made available to counsel and the public upon request.

(3) *Qualifications of Certified Mediators*. An individual may be certified to serve as a mediator in this District provided that the individual shall:

(A) be an attorney who has been admitted for at least ten (10) consecutive years to one or more State Bars or the Bar of the District of Columbia; and

(B) currently be a member in good standing of The Florida Bar and the Bar of this Court; and

(C) have substantial experience either as a lawyer or mediator in matters brought in any United States District Court or Bankruptcy Court; and

(D) have been certified and remain in good standing as a circuit court mediator under the rules adopted by the Supreme Court of Florida; and

(E) have substantial experience as a mediator.

The advisory committee may recommend for certification an attorney to serve as a mediator in this District if it determines that, for exceptional circumstances, the applicant should be certified who is not otherwise eligible for certification under this section.

Any individual who seeks certification as a mediator shall agree to accept at least two (2) mediation assignments per year in cases where at least one (1) party lacks the ability to compensate the mediator, in which case the mediator's fees shall be reduced accordingly or the mediator shall serve pro bono (if no litigant is able to contribute compensation).

The Chief Judge shall constitute an advisory committee from lawyers who represent those categories of civil litigants who may utilize the mediation program and lay persons to assist in formulating policy and additional standards relating to the qualification of mediators and the operation of the mediation program and to review applications of prospective mediators and to recommend certification to the Chief Judge as appropriate.

(4) *Standards of Professional Conduct for Mediators*. All individuals who mediate cases pending in this District shall be governed by the Standards of Professional Conduct in the Florida Rules for Certified and Court-Appointed Mediators adopted by the Florida Supreme Court (the "Florida Rules") and shall be subject to discipline and the procedures therefor set forth in the Florida Rules. Every mediator who mediates a case in this District consents to the jurisdiction of the Florida Dispute Resolution Center and the committees and panels authorized thereby for determining the merits of any complaint made against any mediator in this District.

(5) *Oath Required*. Every certified mediator shall take the oath or affirmation prescribed by 28 U.S.C. § 453 upon qualifying as a mediator.

(6) *Disqualification of a Mediator*. Any person selected as a mediator may be disqualified for bias or prejudice as provided in 28 U.S. C. § 144, and shall be disqualified in any case in which such action would be required of a justice, judge, or Magistrate Judge governed by 28 U.S.C. § 455.

(7) *Compensation of Mediators*. Mediators shall be compensated (a) at the rate provided by standing order of the Court, as amended from time to time by the Chief Judge, if the mediator is appointed by the Clerk on a blind, random basis; or (b) at such rate as may be agreed to in writing by the parties and the mediator, if the mediator is selected by the parties. Absent agreement of the parties to the contrary,

the cost of the mediator's services shall be borne equally by the parties to the mediation conference. A mediator shall not negotiate or mediate the waiver or shifting of responsibility for payment of mediation fees from one party to the other. All mediation fees payable under this rule shall be due within forty-five (45) days of invoice and shall be enforceable by the Court upon motion.

(c) Types of Cases Subject to Mediation. Unless expressly ordered by the Court, the following types of cases shall not be subject to mediation pursuant to this rule:

(1) Habeas corpus cases;

(2) Motion to vacate sentence under 28 U.S.C. § 2255;

(3) Social Security cases;

(4) Civil forfeiture matters;

(5) IRS summons enforcement actions;

(6) Land condemnation cases;

(7) Default proceedings;

(8) Student loan cases;

(9) Naturalization proceedings filed as civil actions;

(10) Statutory interpleader actions;

(11) Truth-in-Lending Act cases not brought as class actions;

(12) Letters rogatory; and

(13) Registration of foreign judgments.

(d) Procedures to Refer a Case or Claim to Mediation.

(1) *Order of Referral*. In every civil case excepting those listed in Local Rule 16.2(c), the Court shall enter an order of referral similar in form to the proposed order available on the Court's website (www.flsd.uscourts.gov), which shall:

(A) Direct mediation be conducted not later than sixty (60) days before the scheduled trial date which shall be established no later than the date of the issuance of the order of referral.

(B) Direct the parties, within fourteen (14) days of the date of the order of referral, to agree upon a mediator. The parties are encouraged to utilize the list of certified mediators established in connection with Local Rule 16.2(b) but may by mutual agreement select any individual as mediator. The parties

shall file and serve a "Notice of Selection of Mediator" within that period of time. If the parties are unable to agree upon a mediator, plaintiff's counsel, or plaintiff if self-represented, shall file and serve a "Request For Clerk To Appoint Mediator," and the Clerk will designate a mediator from the list of certified mediators on a blind, random basis.

(C) Direct that, at least fourteen (14) days prior to the mediation date, each party give the mediator a confidential written summary of the case identifying issues to be resolved.

(2) *Coordination of Mediation Conference*. Plaintiff's counsel (or another attorney agreed upon by all counsel of record) shall be responsible for coordinating the mediation conference date and location agreeable to the mediator and all counsel of record.

(3) *Stipulation of Counsel*. Any action or claim may be referred to mediation upon stipulation of the parties.

(4) *Withdrawal from Mediation*. Any civil action or claim referred to mediation pursuant to this rule may be exempt or withdrawn from mediation by the presiding Judge at any time, before or after reference, upon application of a party and/or determination for any reason that the case is not suitable for mediation.

(e) Party Participation Required. Unless excused in writing by the Court, all parties and required claims professionals (*e.g.*, insurance adjusters) must participate in the mediation conference with full authority to negotiate a settlement as follows:

(i) if the mediation is being conducted by video-conference, participation requires connecting to and participating via video and audio in the mediation conference; and

(ii) if the mediation is being conducted in person, participation requires attending the mediation conference in person (*i.e.*, in person if the party is a natural person, not through an agent; or if the party is an entity, by the personal attendance of an entity representative).

If a party to a mediation is a public entity required to conduct its business pursuant to Florida Statutes Chapter 286, and is a defendant or counterclaim defendant in the litigation, that party shall be deemed to participate in the mediation conference by the participation of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body of the entity. The representative shall not be solely the public entity's counsel (or firm) of record, however, the representative may be the public entity's in-house counsel where another counsel of record for the public entity is also present. In cases where the in-house counsel is counsel of record, that counsel and another representative may act as duly authorized representatives of the public entity. In cases where the parties include a public entity and/or individuals who were or are employed by a public entity or elected officials of a public entity, such individual parties do not need to attend the mediation conference if all claims asserted against the individuals are covered by insurance or by an indemnification from the public entity for purposes of mediation. Notwithstanding the foregoing, counsel representing the individual defendants shall provide the individual defendants with notice of the mediation conference and the individual defendants shall have

the right to attend the mediation conference. The mediator shall report non-participation to the Court. Failure to comply with the participation or settlement authority requirements may subject a party to sanctions by the Court.

(f) Mediation Report; Notice of Settlement; Judgment.

(1) *Mediation Report*. Within seven (7) days following the mediation conference, the mediator shall provide the parties with a Mediation Report. If the mediator is an authorized user of the Court's electronic filing system (CM/ECF) then the mediator shall electronically file and serve a Mediation Report. If the mediator is not an authorized CM/ECF user, the mediator shall either: (a) file the Mediation Report conventionally; or (b) with the consent of the parties, arrange for one of the parties to file a "Notice of Filing Mediator's Report," which shall attach the report as an exhibit.

(2) *Notice of Settlement*. In the event that the parties reach an agreement to settle the case or claim, counsel shall promptly notify the Court of the settlement pursuant to the requirements of S.D. Fla. L.R. 16.4.

(g) Trial upon Failure to Settle.

(1) *Trial upon Failure to Settle*. If the mediation conference fails to result in a settlement, the case will be tried as originally scheduled.

(2) *Restrictions on the Use of Information Derived During the Mediation Conference*. All proceedings of the mediation shall be confidential and are privileged in all respects as provided under federal law and Florida Statutes § 44.405. The proceedings may not be reported, recorded, placed into evidence, made known to the Court or jury, or construed for any purpose as an admission against interest. A party is not bound by anything said or done at the conference, unless a written settlement is reached, in which case only the terms of the settlement are binding.

Effective December 1, 1994. Amended effective April 15, 1996; April 15, 1997; April 15, 1999; April 15, 2004; April 15, 2005; April 15, 2007; April 15, 2009; April 15, 2010; December 1, 2011; December 3, 2012; December 1, 2014; December 1, 2015; December 1, 2017; December 3, 2018; December 2, 2019; December 1, 2022.

RULE 16.3 CALENDAR CONFLICTS

Calendar conflicts will be resolved and notice shall be given in accordance with the Resolution of the Florida State-Federal Council Regarding Calendar Conflicts Between State and Federal Courts (available on the Court's website: www.flsd.uscourts.gov) or as otherwise agreed to between the Judges in a given case.

Effective April 15, 2000. Amended effective April 15, 2006; April 15, 2007; December 1, 2011; December 1, 2015.

Authority

LOCAL RULES

OF

THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

FEBRUARY 1, 2021

Chapter Four — Alternative Dispute Resolution

Rule 4.01 Mediation

Mediation is a settlement conference conducted by a qualified and neutral lawyer without testimony or a determination by the mediator of a question of fact or law.

Rule 4.02 Mediator

(a) CERTIFICATION. The chief judge may certify, and withdraw the certification of, a lawyer's qualification as a mediator.

(b) QUALIFICATIONS. To qualify for certification as a mediator, a lawyer must establish:

(1) membership for at least the last ten years in the bar of any state or the District of Columbia,

(2) membership in good standing in The Florida Bar and the Middle District bar, and

(3) completion of the Florida Supreme Court's certified-mediator training and certification by the Florida Supreme Court of good standing as a circuit court mediator.

(c) DISQUALIFICATION. A party can disqualify a mediator under the same standard that governs disqualifying a federal judge.

(d) COMPENSATION. Unless the parties and the mediator agree otherwise, the parties must pay the mediator a reasonable fee, and must bear equally the cost of mediation. No mediator can charge a fee to, or accept anything of value from, a source other than the parties.

(e) PRO BONO REQUIREMENT. If asked by a judge, a mediator must conduct at least one mediation a year in which the judge determines that a party lacks the ability to pay the mediator.

Rule 4.03 Mediation Order

To refer an action or claim to mediation, the judge must enter an order that:

(a) designates the mediator or directs the parties to select a mediator and to notify the judge of the selection;

(b) establishes a mediation deadline;

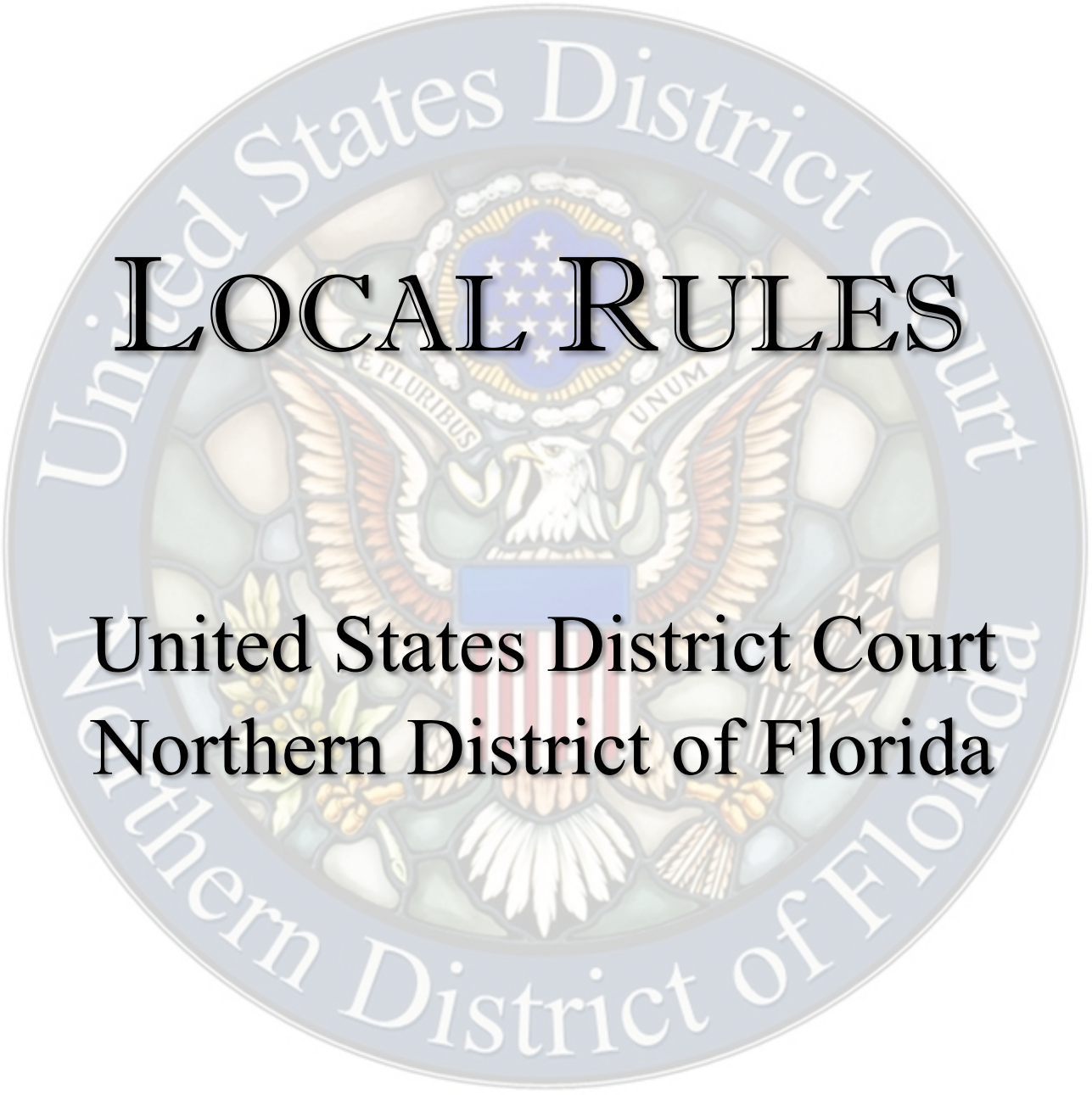
(c) requires a lawyer to confirm a mediation date agreeable to the mediator and the parties and to notify the judge of the date;

(d) requires the attendance of lead counsel, the parties or a party's surrogate satisfactory to the mediator, and any necessary insurance carrier representative;

(e) notifies the parties that unexcused absence or departure from mediation is sanctionable;

(f) requires the mediator to report within seven days after mediation the result of the mediation and whether all required persons attended; and

(g) directs that the substance of the mediation is confidential and that no party, lawyer, or other participant is bound by, may record, or without the judge's approval may disclose any event, including any statement confirming or denying a fact — except settlement — that occurs during the mediation.



Local Rules

United States District Court
Northern District of Florida

Effective November 24, 2015

(A) **Duty to Give Notice**. Each attorney of record must ensure that the Court is notified immediately when:

(1) A civil case is settled;

(2) A defendant elects to enter a guilty plea;

(3) The parties resolve by agreement a motion or other dispute that is under submission; or

(4) A party expects to move for continuance of a trial or hearing.

(B) **Manner of Giving Notice**. Actual notice must be given in a manner that ensures that the judge and court personnel do not unnecessarily work on a settled case or issue and that jurors are not unnecessarily required to appear. When a trial or hearing is imminent or a matter is under submission, filing an electronic notice may not be sufficient; telephone notice may be required. A party must give notice to all other parties at least as promptly as to the Court.

(C) **Expenses.** If a party fails to give notice at least two days—calculated under Federal Rule of Civil Procedure 6—before a jury panel is scheduled to report for jury selection, juror attendance and mileage fees will be assessed against the party or the party's attorney or both, unless the Court orders otherwise for good cause. Other expenses incurred as a result of any failure to give timely notice under this rule—including witness fees, travel expenses, and expenses incurred by the United States Marshal or for court security—may also be assessed. Expenses assessed against an attorney appointed under the Criminal Justice Act may be offset against the attorney's fee.

Rule 16.3 Mediation

The Court may order the parties to mediate a civil case. The parties may agree to mediate a civil case even when the Court has not ordered them to do so. Mediation must be conducted in accordance with the Rules for Certified and Court-Appointed Mediators adopted by the Florida Supreme Court, except as otherwise ordered, but this sentence does not apply to a settlement conference—even if called "mediation"—conducted by a district or magistrate judge. Everything said during a mediation or settlement conference—other than the terms of any settlement agreement itself—is confidential and inadmissible as a settlement negotiation.

Rule 23.1 Class Actions

A pleading that asserts a claim on behalf of or against a class must set out the proposed definition of the class and must allege facts showing that the claim or defense may be so

The Florida Bar

651 East Jefferson Street
Tallahassee, FL 32399-2300

Joshua E. Doyle
Executive Director

850/561-5600
www.floridabar.org

02/06/2023

Application for Accreditation: Course "Winning" Mediation

Dear Jim Baldinger,

Thank you for your application for accreditation for ""Winning" Mediation". Please see CLE credit approval below. Please notify us of any changes to your program.

Please provide course number 2301332N to the members who have completed ""Winning" Mediation".

Florida Bar members can report their CLE credits online at www.floridabar.org. Members will post the CLE credit through the Member Portal.

Certification of Accreditation for Continuing Legal Education

Reference Number:	2301332N
Title:	"Winning" Mediation
Level:	Basic
Approval Period:	03/08/2023 - 09/30/2024

CLE Credits

General	1.0

Sincerely,

Sandra Allbritton
SAllbritton@floridabar.org

PRESENTER BIOGRAPHY:

JAMES B. BALDINGER

BUSINESS DISPUTE MEDIATOR
FLORIDA SUPREME COURT CERTIFIED CIRCUIT CIVIL MEDIATOR

Jim Baldinger is a litigation veteran who knows how to settle complex business disputes.

Jim shows up for mediation thoroughly prepared, having carefully reviewed all submitted materials regarding the factual, legal, and procedural issues in the case, but also with a focus on the business, personal, and emotional implications of the dispute. Jim is an active and creative participant in mediation sessions, not simply a message carrier between the sides.

Jim's extensive experience from the courtroom to the boardroom provides invaluable perspective that informs his approach to guiding parties and their counsel to a successful outcome at mediation. His evaluative process ensures that all parties come away from mediation with a sensible settlement that they believe is in their best interest or, at a minimum, with a deeper understanding of the risks and opportunities in the dispute that will allow them to proceed forward in a more informed and strategic way.

For over 30 years, Jim represented clients as a business litigator and trial lawyer in more than a thousand lawsuits, arbitrations, and mediations across the country, resulting in more than 200 published court decisions. He has earned the respect of clients, opponents, and judges alike.

Jim's success was based on counseling clients from a strategic and holistic perspective, then addressing specific disputes in ways that best serve the client's overall business objectives. He understands the perspective of clients because he was one for many years, as a senior executive managing a 250 person team for a Fortune 100 company, and as in-house corporate litigation counsel.

Over the course of his career, Jim has been involved in business disputes covering nearly every substantive legal area, and he has participated from the vantage points of lead trial counsel, appellate counsel, in-house corporate counsel, the court (as a judicial law clerk), and as a party. He has navigated the complexities of litigation from both the plaintiff and defense perspectives. Jim's experience includes contract disputes, real estate disputes, consumer litigation, class actions, tax matters, fraud litigation, employment cases, intellectual property disputes, antitrust cases, landlord/tenant cases, personal injury litigation, zoning and land use cases, and many others.

Above all, Jim understands that cases resolve when the parties believe that settlement is in their own best interest. He brings patience, persistence, expertise, empathy, and a fresh perspective to mediation that gets cases settled.

JAMES B. BALDINGER

BUSINESS DISPUTE MEDIATOR
FLORIDA SUPREME COURT CERTIFIED CIRCUIT CIVIL MEDIATOR

PROFESSIONAL EXPERIENCE

Carlton Fields, PA *West Palm Beach, FL* — SHAREHOLDER 2003-2021; ASSOCIATE 1992-1995

AT&T Wireless Services, Inc. *West Palm Beach, FL* — VICE PRESIDENT - BUSINESS SECURITY 2002-2003; SENIOR CORPORATE COUNSEL - LITIGATION 1995-2002

Hon. Wm. Terrell Hodges, United States District Judge *Tampa, FL* — LAW CLERK 1990-1992

Hon. Steven D. Merryday, United States District Judge *Tampa, FL* — LAW CLERK 1992

EDUCATION

Georgetown University Law Center *Washington, DC* — JURIS DOCTOR, *CUM LAUDE,* May 1990
Law Review: The Tax Lawyer

University of Pennsylvania *Philadelphia, PA* — BACHELOR OF ARTS May 1987

PROFESSIONAL AND COMMUNITY INVOLVEMENT

Florida Academy of Professional Mediators

American Bar Association
CO-CHAIR, PRIVACY AND COMPUTER CRIME COMMITTEE

The Florida Bar

Craig S. Barnard American Inn of Court LIX
MASTER

International Security Management Association

Wireless Chief Security Officers Forum
FOUNDER

United Jewish Communities North America
NATIONAL YOUNG LEADERSHIP CABINET

Palm Beach County Bar Association

Palm Beach County Food Bank
CO-CHAIR, EMPTY BOWLS ANNUAL FUNDRAISER

Palm Beach County Commission for Jewish Education
PRESIDENT

Jewish Federation of Palm Beach County
CHAIR, BUSINESS AND PROFESSIONS DIVISION
CHAIR, COMMUNITY DEMOGRAPHIC STUDY COMMITTEE
CHAIR, CJE ADVISORY COUNCIL

MEDIATOR CERTIFICATIONS

Florida Supreme Court Certified Circuit Civil Mediator

US District Court, Middle District of Florida, Certified Mediator

BALDINGER MEDIATION LLC

PHONE: 561.805.1545 | EMAIL: jim@baldingermediation.com | WEBSITE: www.baldingermediation.com

BAR ADMISSIONS

US Court of Appeals, Tenth Circuit

US Court of Appeals, Eleventh Circuit

State of Florida

US District Court, Middle District of Florida

US District Court, Northern District of Florida

US District Court, Southern District of Florida

US District Court, Northern District of Illinois

US District Court, Eastern District of Michigan

US District Court, Northern District of Texas

US District Court, Southern District of Texas

SELECTED RECOGNITION

AV Preeminent® Rating, Martindale-Hubbell*

Most Effective Lawyers Award, Daily Business Review (2009, 2016, 2019)

Florida Super Lawyers, Super Lawyers Magazine (2011–2013, 2017–2018, 2023)

Certificate from FBI Director Robert Mueller for assistance in combating international terrorism in connection with work on stopping wireless handset trafficking (May 2010)

Finalist, Key Partners Awards, South Florida Business Journal (2008)

AT&T Wireless Circle of Excellence Award (1997, 2001)

SELECTED PRESS COVERAGE

Associated Press, "Cell Phone Companies Scramble to Halt Trafficking," *San Jose Mercury News*, 13 July, 2008.

Elinson, Zusha and Ovide, Shira, "Throwing the Switch on Smartphone Theft," *Wall St. Journal*, 27 July 2015, p. A3.

MacLean, Pamela, "Phone Tactic Rings Up Lawsuits," *National Law Journal*, 20 Aug. 2007.

Thurwachter, Mary, "Co-Chair of West Palm Empty Bowls Event Gears Up for Hunger Fundraiser," *Palm Beach Post*, 9 Feb. 2015.

Wolchek, Rob, "Detroit-Style Smartphone Trafficking Hits LA," *Fox 2 News Detroit*, 15 June 2015.

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