

Florida Dispute Resolution Center Zoom Webinar
It's Complicated: Court Mediation Procedural Rules
Friday, December 11, 2020; 3:00 p.m. – 4:00 p.m. EST
Presenters: Susan Marvin and Kimberly Kosch
CME: 1.0 hour in mediator ethics
TFB CLE: 1.0 hour legal ethics, #2007570N

Welcome and Overview of Participation (10 minutes)

Court Mediation Procedural Rules: Overview, Compare & Contrast (40 minutes)

Appearance, Authority & Agreements in Small Claims, County Cases, Civil, Family, Juvenile, and Appellate Rules of Court Mediation Procedure

Q & A (10 minutes)

Adjourn

Materials:

- Agenda
- Certificate of Attendance
- Cheat Sheet 2020 Edition
- Selected MEAC Opinions
- Mediator's Almanac 2021

Next Webinar:

Friday, January 29, 2021, *Mediator Ethics: The Best of MEAC*; 12 noon EST

This webinar will be recorded and made available on Florida Courts – YouTube
<https://www.youtube.com/channel/UCd2y6bJjeSKcwlS30-pRR9w/videos>

Dispute Resolution Center
Mediator Ethics: It's Complicated
Certificate of Attendance

is hereby granted to:



CME 1.0 mediator ethics hour

CLE 1.0 legal ethics hour #2007570N

December 11, 2020

Susan C. Marwin

Susan C. Marwin, Chief of ADR

It's Complicated Cheat Sheet 2020

Note: As directly referenced in the mediation procedural rules for these areas of mediation.

Appearance and Authority						
	<i>Small Claims</i>	<i>County</i>	<i>Family</i>	<i>Circuit</i>	<i>Dependency</i>	<i>Appellate</i>
Party Not Required to Appear	X				X (if parties and mediator agree)	
Party Required to Appear		X	X	X	X	X
Party Can Stipulate (i.e., change) Appearance		X	X	X		
Court Can Stipulate (i.e., change) Appearance	X	X		X	X	X
Appearance of Public Entity		X		X		X
Appearance of Participants (other than attorneys)					X	
Appearance of Child					X	
Attorneys Need Not Appear	X	X (if parties and mediator agree)	X (if parties and mediator agree)	X (if parties and mediator agree)	X (if parties and mediator agree)	
Appearance of Multi Attorneys						X
Appearance Electronically						X (if parties agree)
Certificate of Authority for Party Representatives		X		X		X
Sanctions for Non Appearance	X	X	X	X	X	X
Full Authority Defined		X		X	X (for participants only)	X
Agreements						
	<i>Small Claims</i>	<i>County</i>	<i>Family</i>	<i>Circuit</i>	<i>Dependency</i>	<i>Appellate</i>
Report Agreement as Stipulation	X					
Report of Mediation Due Within 10 days		X		X		X
Agreement Filed with Court	X	X (When required by law or with parties consent)	X (Unless parties agree otherwise)	X (When required by law or with parties consent)	X	
Court Approval of Agreement			Permissive		Required	
Sanctions for Breach of Agreement		X		X	X	

It's Complicated: Mediation Appearance, Authority & Agreements

MEAC Opinions on Topic 2020 Edition

Appearance	
2018-004	A mediator shall comply with all statutes, administrative orders and court rules relevant to mediation and in doing so may unilaterally set a mediation date to comply with an order of the court as long as the mediator is open to resetting the date to accommodate the parties in the time frame ordered by the court.
2017-003	A mediator shall not schedule a mediation in a manner that does not provide adequate time for the parties to fully exercise their right of self-determination. The process must allow for the mediation to be adjourned and reconvened to complete the mediation if the parties so choose. A mediator must respond in a manner consistent with the Rules for Certified and Court-Appointed Mediators when asked by pro se parties to provide information. A mediator may assist the party in filling out Florida Supreme Court approved forms but must ensure that the information provided for the forms is from the party whom they are assisting.
2015-002	Unless there is a local court rule, court order or administrative order requiring a mediator to identify the parties or participants who appeared for mediation, the mediator may, but is not required to do so.
2014-011	MEAC notes a distinction between the filing of a notice of mediation <u>with the court</u> and notifying <u>the parties</u> in writing of the date, time, and specifics of a mediation. The Florida Rules for Certified and Court-Appointed Mediators and Florida procedural rules regarding mediation make mention of a mediator notifying parties but are silent as to whether a mediator may or may not file a notice of mediation with the court. The Committee is of the opinion that a mediator may not file a notice of mediation with the court unless the parties have agreed to use the mediator; the court has designated a mediation program which selects that mediator; or the court selects that mediator directly.
2013-001	Question one: It is a breach of confidentiality for a certified mediator to report to the court that a party who appears telephonically or by other electronic means pursuant to court order, failed to return the signed agreement after verbally agreeing to sign it. Question two: If a party appearing by phone fails to sign and return an agreement after agreeing to do so, that is a confidential “mediation communication.” Question three: The mediation unit cannot report to the court that a party has repeatedly not returned signed mediation agreements after agreeing to do so. Question four: A notification to the court that the mediator is “waiting for signatures” for an agreement is a breach of confidentiality.
2012-005	In accordance with Rule 10.520, a certified mediator conducting a mediation in U.S. Bankruptcy Court for the Middle District of Florida who discloses that “a party failed to negotiate in good faith” or “willfully failed to appear at mediation” does not violate the mediator’s ethical responsibilities to mediation confidentiality as such disclosure is required by the local rules of that court.
2007-001	A mediator may report a party’s failure to appear at mediation so long as it is based on the physical fact of a failure to appear and not on a mediation communication or assertion.

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2010-014	A mediator does not have the authority to compel attendance at subsequent mediation conferences against the wishes of the parties and/or their counsel.
2006-008	A. A mediator may report to the court that a party or counsel has failed to attend a mediation if this conclusion is based on observation by the mediator and is not dependent on a “mediation communication” as defined in 44.403, Florida Statutes. B. The mediator may report the fact of nonpayment of mediation fees to the court.
2005-007	A and C: If a party is requesting that the mediation be rescheduled for “good cause,” the mediation should be rescheduled to a mutually convenient time consistent with rule 10.330(a). If the party is objecting to attending mediation, the mediator cannot compel attendance, however, the party should be advised that pursuant to rule 12.741(b)(2), the party may be subject to sanctions by the court for “nonappearance.” B: A report to the court regarding nonappearance should not include any reason for the nonappearance. D: A date for mediation may be set without the advance agreement of all parties, but then any party would be permitted to request that it be rescheduled. E: A mediator may report non-appearance at a mediation if the mediator gave the non-appearing party due notice of the date and time for the mediation session and good cause was not shown for rescheduling.
2002-001	The requirements of 1.720(b)(1), Florida Rules of Civil Procedure, regarding appearances cannot be satisfied by the physical presence of the party’s attorney or in-house counsel of an entity without the named party.
2000-003	Pursuant to the rules, the reason for cancellation or postponement should not be explained in the mediator’s report.
Authority	
2006-003	A) Yes, it would be an ethical violation to report to the court that a party did not have full settlement authority. Under the circumstances presented, the mediator is limited to reporting that no agreement was reached. B) No, the parties’ signatures on the stipulation form are insufficient to authorize a mediator to disclose otherwise confidential information.
2003-009	A mediator has no affirmative duty at the beginning of a mediation to inquire about a representative’s authority.
Agreements	
2020-002	Mediators shall not make substantive decisions for the parties or report outcomes to the court based solely on the mediator’s observations. The MEAC affirms MEAC Opinion 2017-006 as to the outcomes of the mediation which may be reported to the court.

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2019-006	If a duly scheduled mediation is not conducted, the mediator may report to the court that the mediation was not held. The mediator may but is not required to report the parties who attended or did not attend the mediation. However, a mediator shall not include mediation communications in the mediator's report. The MEAC declines to offer best practices for cancellation windows but does provide rule guidance on the assessments of fees.
2019-005	There is no rule in the Florida Rules for Certified and Court-Appointed Mediators or the Florida Rules of Civil Procedure that requires the mediator to report the attendees at mediation or prohibits a mediator from doing so.
2018-001	Settlement agreement language inserted into an agreement by the mediator regarding a mediator's compliance with the ethical rules does not promote or respond to the needs and interests of the parties, may create an obstacle to the parties signing the agreement which otherwise memorializes their agreed upon terms, and may result in the parties feeling coerced to agree to additional substantive language regarding ethical issues extraneous to their dispute in order to obtain a written agreement.
2017-006	A mediator may report "agreement," "no agreement," or "partial agreement" to the court without comment or recommendation. No other descriptors or modifiers may be used in the mediator report unless the parties have consented to them in writing.
2016-005	The Florida Rules for Certified and Court-Appointed Mediators do not prohibit a mediator's support staff from notarizing or witnessing signatures on settlement agreements. The ethical standards contained in the rules do not extend to persons who are not Florida Supreme Court certified mediators or court-appointed mediators.
2015-005	The verbal discussion in the scenario presented satisfies the requirements of rule 10.420(c), Florida Rules for Certified and Court-Appointed Mediators. The rule does not require the mediator to write something regarding the terms of the agreement prior to the close of the mediation session if the parties have agreed who will memorialize the agreement and the process for its formalization. The Committee Note to rule 10.420
2013-007	Unless the parties have agreed otherwise, written communications included in a mediated agreement that has been signed by all parties and counsel are not confidential.
2012-010	Question one: It is a breach of confidentiality to file a mediation report and agreement when a party's signature is missing. Question two: The mediator should not file the mediation report and agreement prepared at the mediation which was signed by only one party; it is not an agreement and therefore the terms are subject to the statute and rules regarding confidential mediation communications. a. If either party requests a copy of the draft agreement, the mediator should provide copies to all parties. If no request for a copy of the report or agreement is made, the mediator should follow his/her normal procedures for notes taken during a mediation in which no agreement was reached. b. In the absence of signatures from all parties on a drafted agreement, the mediator should file a report of "no agreement."
2012-009	Question one: Your circuit's mediation report form which has the outcomes: "agreement," "partial agreement," "no agreement,"

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	<p>or “continuance” (adjournment), meets the requirements of the Florida Rules of Civil Procedure and the Florida Family Law Rules of Procedure.</p> <p>Question two: It is a clear violation of Florida Rule of Civil Procedure 1.730(a) to add the term “signed” to a description of an agreement in a mediation report.</p> <p>Question three: The interpretation of Florida Family Law Rule of Procedure 12.740(f)(1) on which this question is based is erroneous. Although rule 12.740(f)(1) allows the parties to agree to electronically or stenographically record an agreement, that agreement must be “made under oath or affirmed” and the transcript of such agreement must then be signed by all parties before being filed with the court.</p>
2011-001	It is neither a requirement nor a violation of the Florida Rules of Civil Procedure or the Rules for Certified and Court-Appointed Mediators for a certified mediator to sign a written settlement agreement in the capacity of mediator.
2007-002	<p>A. It would not be appropriate to routinely attach the mediated settlement agreement to a circuit civil case in light of the requirements of rule 1.730(b), Florida Rules of Civil Procedure.</p> <p>B. If one party objects, the agreement cannot be attached.</p> <p>C. The Committee declines to answer this question since it asks for an opinion on the behavior of someone other than a certified or court-appointed mediator.</p>
2003-010	<p>A. Pursuant to family court rules, a mediator is obligated to see that a mediated agreement is reduced to writing but is not obligated to write the agreement. This rule does not conflict with the statutory provision requiring the mediator to prepare a consent order, since this provision merely requires such agreement to be incorporated into a consent order prepared by the mediator.</p> <p>B. While a mediator cannot compel parties who have reached an agreement to put such agreement in writing and sign it immediately, the mediator does have the obligation to “discuss with the parties and counsel the process for formalization and implementation of the agreement,” and to see that the agreement is “memorialized appropriately.”</p>

Mediator's Almanac 2021



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Chapter 44, Florida Statutes - Select References

44.1011 Definitions

- (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, decision making 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.

44.102 Court-ordered mediation

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

Chapter 44, Florida Statutes - Select References

(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.

Chapter 44, Florida Statutes - Select References

(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.

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).

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;

Chapter 44, Florida Statutes - Select References

- (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.

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.

Chapter 44, Florida Statutes - Select References

44.401 Mediation Confidentiality and Privilege Act

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.

44.403 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, videoconference, 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.

Chapter 44, Florida Statutes - Select References

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.

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.

Chapter 44, Florida Statutes - Select References

(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.

Chapter 44, Florida Statutes - Select References

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.

Rules of Court Procedure – Select References

Florida Rules of Civil Procedure

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. Such stipulation shall be incorporated into the order of referral.
- (1) Conference or Hearing Date. Unless otherwise ordered by the court, the first mediation conference or arbitration hearing shall 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, shall notify the parties in writing of the date, time, and place of the conference or hearing unless the order of referral specifies the date, time, and place.
- (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.

Rules of Court Procedure – Select References

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 where mediation is interrupted pending resolution of such a motion.
- (b) Appearance at Mediation. Unless otherwise permitted by court order or stipulated by the parties in writing, a party is deemed to appear at a mediation conference if the following persons are physically present:
 - (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

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- (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 shall be deemed to appear at a mediation conference by the physical presence 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.
- (e) **Certification of Authority.** Unless otherwise stipulated by the parties, each party, 10 days prior to appearing at a mediation conference, shall file with the court and serve all parties a written notice identifying the person or persons who will be attending 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.

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(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 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 respects 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

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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 shall be reduced to writing and signed by the parties and their counsel, if any. The agreement shall be filed when required by law or with the parties' consent. A report of the agreement shall be submitted to the court or a stipulation of dismissal shall be filed. By stipulation of the parties, the agreement may be electronically or stenographically recorded. In such event, the transcript may be filed with the court. The mediator shall report the existence of the signed or transcribed agreement to the court without comment within 10 days thereof. No agreement under this rule shall be reported to the court except as provided herein.
- (c) 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, attorney 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

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

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Florida Small Claims Rule 7.090 Select References

- (f) Appearance at Mediation; Sanctions. In small claims actions, an attorney may appear on behalf of a party at mediation if 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. Mediation may take place at the pretrial conference. Whoever appears for a party must have full authority to settle. Failure to comply with this subdivision may result in the imposition of costs and attorney fees incurred by the opposing party.
- (g) Agreement. Any agreements reached as a result of small claims mediation shall be written in the form of a stipulation. The stipulation may be entered as an order of the court.

Committee Notes

2008 Amendment. The requirement that an attorney attending mediation on behalf of the client have full authority to settle should not be equated to a requirement to settle where one or more parties wants to proceed to trial.

Florida Rules of Juvenile Procedure - Rule 8.290

Rule 8.290 Dependency Mediation

- (a) Definitions. The following definitions apply to this rule:
 - (1) "Dependency matters" means proceedings arising under Chapter 39, Florida Statutes.
 - (2) "Dependency mediation" means mediation of dependency matters.
 - (3) "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 non-adversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decision-making 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.
- (b) Applicability. This rule applies only to mediation of dependency matters.
- (c) Compliance with Statutory Time Requirements. Dependency mediation shall be conducted in compliance with the statutory time requirements for dependency matters.
- (d) Referral. Except as provided by this rule, all matters and issues described in subdivision (a)(1) may be referred to mediation. All referrals to mediation shall be in written form, shall advise the parties of their right to counsel, and shall set a date for hearing before the court to review the progress of the mediation. The mediator or mediation program shall be appointed

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by the court or stipulated to by the parties. If the court refers the matter to mediation, the mediation order shall address all applicable provisions of this rule. The mediation order shall be served on all parties and on counsel under the provisions of the Florida Rules of Juvenile Procedure.

(e) Appointment of the Mediator.

(1) Court Appointment. The court, in the order of referral to mediation, 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.

(2) Party Stipulation. Within 10 days of the filing of the order of referral to mediation, the parties may agree upon a stipulation with the court designating:

(A) another certified dependency mediator, other than a senior judge presiding as a judge in that circuit, to replace the one selected by the judge; 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.

(f) Fees. Dependency mediation referrals may be made to a mediator or mediation program that charges a fee. Any order of referral to a mediator or mediation program charging a fee shall advise the parties that they may timely object to mediation on grounds of financial hardship. On the objection of a party or the court's own motion, the court may, after considering the objecting party's ability to pay and any other pertinent information, reduce or eliminate the fee.

(g) Objection to Mediation. Within 10 days of the filing of the order of referral to mediation, any party or participant ordered to mediation may make a written objection to the court about the order of referral if good cause for such objection exists. If a party objects, mediation shall not be conducted until the court rules on the objection.

(h) Scheduling. The mediation conference may be held at any stage of the proceedings. Unless otherwise scheduled by the court, the mediator or the mediation program shall schedule the mediation conference.

(i) Disqualification of the Mediator. Any party may move to enter an order disqualifying a mediator for good cause. If the court rules that a mediator is disqualified from mediating a case, an order shall be entered with the name of a qualified replacement. Nothing in this provision shall preclude mediators from disqualifying themselves or refusing any assignment.

(j) Substitute Mediator. 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

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the agreement of the parties or approval of the court. A substitute mediator shall have the same qualifications as the original mediator.

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

(l) Appearances.

(1) Order naming or prohibiting attendance of parties. The court shall enter an order naming the parties and the participants who must appear at the mediation and any parties or participants who are prohibited from attending the mediation. Additional participants may be included by court order or by mutual agreement of all parties.

(2) Physical presence of adult parties and participants. Unless otherwise agreed to by the parties or ordered by the court, any party or participant ordered to mediation shall be physically present at the mediation conference. Persons representing an agency, department, or program must have full authority to enter into an agreement that shall be binding on that agency, department, or program. In the discretion of the mediator, and with the agreement of the attending parties, dependency mediation may proceed in the absence of any party or participant ordered to mediation.

(3) Appearance of counsel. In the discretion of the mediator, and with the agreement of the attending parties, dependency mediation may proceed in the absence of counsel, unless otherwise ordered by the court.

(4) Appearance of child. The court may prohibit the child from appearing at mediation upon determining that such appearance is not in the best interest of the child. No minor child shall be required to appear at mediation unless the court has previously determined by written order that it is in the child's best interest to be physically present. The court shall specify in the written order of referral to mediation any special protections necessary for the child's appearance.

(5) Sanctions for failure to appear. If a party or participant ordered to mediation fails to appear at a duly noticed mediation conference without good cause, the court, on motion of any party or on its own motion, may impose sanctions. Sanctions against the party or participant failing to appear may include one or more of the following: contempt of court, an award of mediator fees, an award of attorney fees, an award of costs, or other remedies as deemed appropriate by the court.

(m) Caucus with Parties and Participants. During the mediation session, the mediator may meet and consult privately with any party, participant, or counsel.

(n) Continuances. The mediator may end the mediation session at any time and may set new times for reconvening the mediation. No further notification shall be required for parties or participants present at the mediation session.

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(o) Report on Mediation.

(1) If agreement is reached on all or part of any matter or issue, including legal or factual issues to be determined by the court, the agreement shall be immediately reduced to writing, signed by the attending parties, and promptly submitted to the court by the mediator with copies to all parties and counsel.

(2) 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.

(p) Court Hearing and Order On Mediated Agreement. On receipt of a full or partial mediation agreement, the court shall hold a hearing and enter an order accepting or rejecting the agreement consistent with the best interest of the child. The court may modify the terms of the agreement with the consent of all parties to the agreement.

(q) Imposition of Sanctions on Breach of Agreement. In the event of any breach or failure to perform under the court-approved agreement, the court, on a motion of any party or on its own motion, may impose sanctions. The sanctions may include contempt of court, vacating the agreement, imposition of costs and attorney fees, or any other remedy deemed appropriate by the court.

Committee Notes

1997 Adoption. In considering the provision regarding the appearance of the child found in subdivision (1)(4), the Committee considered issues concerning the child's right to participate and be heard in mediation and the need to protect the child from participating in proceedings when such participation would not be in the best interest of the child. The Committee has addressed only the issue of mandating participation of the child in mediation. In circumstances where the court has not mandated that the child appear in mediation, the Committee believes that, in the absence of an order prohibiting the child from mediation, the participation of the child in mediation will be determined by the parties. Whenever the court, pursuant to subdivision (p) determines whether to accept, reject, or modify the mediation agreement, the Committee believes that the court shall act in accordance with the confidentiality requirements of chapter 44, Florida Statutes.

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Florida Rules of Appellate Procedure - Rules 9.700 – 9.740

Rule 9.700 Mediation Rules

- (a) **Applicability.** Rules 9.700 – 9.740 apply to all appellate courts, including circuit courts exercising jurisdiction under rule 9.030(c), district courts of appeal, and the Supreme Court of Florida.
- (b) **Referral.** The court, upon its own motion or upon motion of a party, may refer a case to mediation at any time. Such motion from a party shall contain a certification that the movant has consulted opposing counsel or unrepresented party and that the movant is authorized to represent that opposing counsel or unrepresented party:
 - (1) has no objection;
 - (2) objects and cites that specific reasons for objections; or
 - (3) will promptly file an objection.
- (c) **Time Frames for Mediation.** The first mediation conference shall be commenced within 45 days of referral by the court, unless the parties agree to postpone mediation until after the period for filing briefs has expired. The mediation shall be completed within 30 days of the first mediation conference. These times may be modified by order of the court.
- (d) **Tolling of Times.** Unless otherwise ordered, or upon agreement of the parties to postpone mediation until after the expiration of time for filing the appellate briefs, all times under these rules for the processing of cases shall be tolled for the period of time from the referral of a case to mediation until mediation ends pursuant to section 44.404, Florida Statutes. The court, by administrative order, may provide for additional tolling of deadlines. A motion for mediation filed by a party within 30 days of the notice of appeal shall toll all deadlines under these rules until the motion is ruled upon by the courts.
- (e) **Motion to Dispense with Mediation.** A motion to dispense with mediation may be served not later than 10 days after the discovery of the facts which constitute the grounds for the motion, if:
 - (1) the order violates rule 9.710; or
 - (2) other good cause is shown.

Rule 9.710 Eligibility for Mediation

Any case filed may be referred to mediation at the discretion of the court, but under no circumstances may the following categories of action be referred:

- (a) Criminal and post-conviction cases.
- (b) Habeas corpus and extraordinary writs.
- (c) Civil or criminal contempt.
- (d) Involuntary civil commitments of sexually violent predators.
- (e) Collateral criminal cases.
- (f) Other matters as may be specified by administrative order.

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Rule 9.720 Mediation Procedures

(a) Appearance. If a party to mediation is a public entity required to conduct its business pursuant to chapter 286, Florida Statutes, that party shall be deemed to appear at a mediation conference by the physical 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. Otherwise, unless changed by order of the court, a party is deemed to appear at a mediation conference if the following persons are physically present or appear electronically upon agreement of the parties:

- (1) The party or its representative having full authority to settle without further consultation.
- (2) The party's trial or appellate counsel of record, if any. If a party has more than one counsel, the appearance of only one counsel is required.
- (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 without further consultation.

(b) Sanctions. If a party fails to appear at a duly noticed mediation conference without good cause, the court, upon motion of a party or upon its own motion, may impose sanctions, including, but not limited to, any or all of the following, against the party failing to appear:

- (1) An award of mediator and attorney fees and other costs or monetary sanctions.
- (2) The striking of briefs.
- (3) Elimination of oral argument.
- (4) Dismissal or summary affirmance.

(c) Scheduling of Adjournments. Consistent with the time frames established in rule 9.700(c) and after consulting with the parties, the mediator shall set the initial conference date. The mediator may adjourn the mediation conference at any time and may set times for reconvening the adjourned conference. The mediator shall notify the parties in writing of the date, time, and place of any mediation conference, except no further notification is required for parties present at an adjourned mediation conference.

(d) Control of Procedures. The mediator shall at all times be in control of the procedures to be followed in the mediation.

(e) Communication with Parties. The mediator may meet and consult privately with any party or parties or their counsel. Counsel shall be permitted to communicate privately with their clients.

(f) Party Representative Having Full Authority to Settle. Except as provided in subdivision (a) as to public entities, a "party or its 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.

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- (g) Certificate of Authority. Unless otherwise stipulated by the parties, each party, 10 days prior to appearing at a mediation conference, shall file with the court and serve upon all parties a written notice identifying the person or persons who will be attending the mediation conference as a party representative or as an insurance carrier representative, and confirming that those persons have the authority required by this rule.

Committee Note

2014 Amendment. The amendment adding subdivisions (f) and (g) is intended to make this rule consistent with the November 2011 amendments to Florida Rule of Civil Procedure 1.720.

Rule 9.730 Appointment and Compensation of the Mediator

(a) Appointment by Agreement. Within 10 days of the court order of referral, the parties may file a stipulation with the court designating a mediator certified as an appellate mediator pursuant to rule 10.100(f), Florida Rules for Certified and Court-Appointed Mediators. Unless otherwise agreed to by the parties, the mediator shall be licensed to practice law in any United States jurisdiction.

(b) Appointment by Court. If the parties cannot agree upon a mediator within 10 days of the order of referral, the appellant shall notify the court immediately and the court shall appoint a certified appellate mediator selected by such procedure as is designated by administrative order. The court shall appoint a certified appellate mediator who is licensed to practice law in any United States jurisdiction, unless otherwise requested upon agreement of the parties.

(c) Disqualification of Mediator. Any party may move to enter an order disqualifying a mediator for good cause. Such a motion to disqualify shall be filed within a reasonable time, not to extend 10 days after discovery of the facts constituting the grounds for the motion, and shall be promptly presented to the court for an immediate ruling. If the court rules that a mediator is disqualified from a case, an order shall be entered setting forth the name of a qualified replacement. The time for mediation shall be tolled during any period in which a motion to disqualify is pending.

(d) Substitute Mediator. If a mediator agreed upon by the parties or appointed by the court cannot serve, a substitute mediator may be agreed upon or appointed in the same manner as the original mediator.

(e) Compensation of a Court-Selected Mediator. If the court selects the mediator pursuant to subdivision (b), the mediator shall be compensated at the hourly rate set by the court in the referral order or applicable administrative order. Unless otherwise agreed, the compensation of the mediator should be prorated among the named parties.

Committee Notes

This rule is not intended to limit the parties from exercising self-determination in the selection of any appropriate form of alternative dispute resolution or to deny the right of the parties to select a neutral. The rule does not prohibit parties from selecting an otherwise qualified non-certified appellate mediator prior to the court's order of referral. Parties may pursue settlement with a non-certified appellate mediator even within the ten-day period following the referral. However,

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once parties agree on a certified appellate mediator, or notify the court of their inability to do so, the parties can satisfy the court's referral to mediation pursuant to these rules only by appearing at a mediation conducted by a supreme court certified appellate mediator.

Rule 9.740 Completion of Mediation

(a) No Agreement. If the parties do not reach an agreement as a result of mediation, the mediator shall report, within 10 days, the lack of an agreement to the court without comment or recommendation.

(b) Agreement. If a partial or final agreement is reached, it shall be reduced to writing and signed by the parties and their counsel, if any. Within 10 days thereafter, the mediator shall file a report with the court on a form approved by the court.

Florida Family Law Rules of Procedure

Rule 12.740 Family Mediation

- (a) Applicability. This rule governs mediation of family matters and related issues.
- (b) Referral. Except as provided by law and this rule, all contested family matters and issues may be referred to mediation. Every effort shall be made to expedite mediation of family issues.
- (c) Limitation on Referral to Mediation. Unless otherwise agreed by the parties, family matters and issues may be referred to a mediator or mediation program which charges a fee only after the court has determined that the parties have the financial ability to pay such a fee. This determination may be based upon the parties' financial affidavits or other financial information available to the court. When the mediator's fee is not established under section 44.108, Florida Statutes, or when there is no written agreement providing for the mediator's compensation, the mediator shall be compensated at an hourly rate set by the presiding judge in the referral order. The presiding judge may also determine the reasonableness of the fees charged by the mediator. When appropriate, the court shall apportion mediation fees between the parties and shall state each party's share in the order of referral. 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.
- (d) Appearances. Unless otherwise stipulated by the parties, a party is deemed to appear at a family mediation convened pursuant to this rule if the named party is physically present at the mediation conference. In the discretion of the mediator and with the agreement of the parties, family mediation may proceed in the absence of counsel unless otherwise ordered by the court.
- (e) Completion of Mediation. Mediation shall be completed within 75 days of the first mediation conference unless otherwise ordered by the court.

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(f) Report on Mediation.

(1) If agreement is reached as to any matter or issue, including legal or factual issues to be determined by the court, the agreement shall be reduced to writing, signed by the parties and their counsel, if any and if present, and submitted to the court unless the parties agree otherwise. By stipulation of the parties, the agreement may be electronically or stenographically recorded and made under oath or affirmed. In such event, an appropriately signed transcript may be filed with the court.

(2) After the agreement is filed, the court shall take action as required by law. When court approval is not necessary, the agreement shall become binding upon filing. When court approval is necessary, the agreement shall become binding upon approval. In either event, the agreement shall be made part of the final judgment or order in the case.

(3) 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.

Commentary

1995 Adoption. This rule is similar to former Florida Rule of Civil Procedure 1.740. All provisions concerning the compensation of the mediator have been incorporated into this rule so that all mediator compensation provisions are contained in one rule. Additionally, this rule clarifies language regarding the filing of transcripts, the mediator's responsibility for mailing a copy of the agreement to counsel, and counsel's filing of written objections to mediation agreements.

Rule 12.741 Mediation Rules

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

General Procedures.

(1) 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.

(2) Sanctions. If a party fails to appear at a duly noticed mediation conference without good cause, or knowingly and willfully violates any confidentiality provision under section 44.405,

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Florida Statutes, the court upon motion shall impose sanctions, including an award of mediator and attorneys' fees and other costs, against the party.

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

(4) Counsel. Counsel shall be permitted to communicate privately with their clients. The mediator shall at all times be in control of the mediation and the procedures to be followed in the mediation.

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

(6) Appointment of the Mediator.

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

(i) a certified mediator, other than a senior judge presiding as a judge in that circuit; or

(ii) 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.

(B) 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.

(C) 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.

Commentary

1995 Adoption. This rule combines and replaces Florida Rules of Civil Procedure 1.710, 1.720, and 1.730. The rule, as combined, is substantially similar to those three previous rules, with the following exceptions. This rule deletes subdivisions (a) and (b) of rule 1.710 and subdivisions (b) and (c) of rule 1.730. This rule compliments Florida Family Law Rule of Procedure 12.740 by providing direction regarding various procedures to be followed in family law mediation proceedings.

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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 subcommittees 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

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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.

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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

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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.

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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.

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(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 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 shall not preside over any case in the circuit where the mediation services are provided; however, a senior judge may preside over 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

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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.

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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.

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- (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.

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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.

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- (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.

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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 accepted. 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.

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(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.

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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.