

## Committee on Alternative Dispute Resolution Rules & Policy Recommendations for Revisions to Court Procedural Rules

### Florida Rules of Civil Procedure - Rule 1.720 Mediation Procedures

(j) ~~Appointment~~ Assignment of the Mediator.

(1) Selection of the Mediator. ~~In all civil actions, except those pending in county court and those governed by the Florida Family Law Rules of Procedure or the Florida Rules of Juvenile Procedure, within 10 days of the order of referral, the parties shall mediate with a Florida Supreme Court certified circuit mediator. 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) Selection by the Court. ~~In the event the parties cannot agree upon a Florida Supreme Court certified circuit mediator, the plaintiff or petitioner shall, within 10 days after a lack of agreement, 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 select appoint a Florida Supreme Court certified circuit 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 any either party, the court shall select appoint a Florida Supreme Court certified circuit court mediator who is a member of The Florida Bar also licensed to practice law in any United States jurisdiction.~~

(3) If a mediator agreed upon by the parties or ~~selected~~ appointed by ~~at~~ the court cannot serve, a substitute mediator ~~can~~ shall be agreed upon or ~~selected~~ 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.~~

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### Committee Note

2017. The intent of the 2017 revisions is to ensure that all mediators who mediate court cases subject to the rule are certified to mediate circuit cases. These amendments do not preclude parties from mediating cases pre-suit with a mediator who is not a Florida Supreme Court certified circuit mediator. In addition, the revision expanding the selection of a circuit mediator who is licensed to practice law in any United States jurisdiction rather than a member of The Florida Bar makes the rule consistent with the language of the 2011 adoption of the appellate mediation procedural rules.

### **Florida Rules of Civil Procedure - Rule 1.750 County Court Actions**

- (c) ~~Scheduling~~Small Claims Mediation and Scheduling of the Mediator. In small claims actions, ~~the~~a Florida Supreme Court certified county 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~~Selection of the Mediator. In all county court actions not governed by~~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.~~the parties shall mediate with a Florida Supreme Court certified county mediator. In the event the parties cannot agree upon a Florida Supreme Court certified county mediator, the plaintiff or petitioner shall, within 10 days after a lack of agreement, so notify the court and the court shall select a Florida Supreme Court certified county mediator.

### 2017 Committee Note

2017. The intent of the 2017 revisions is to ensure that all mediators who mediate court cases subject to the rule are certified to mediate county cases. These amendments do not preclude parties from mediating cases pre-suit with a mediator who is not a Florida Supreme Court certified county mediator.

### **Florida Rules of Juvenile Procedure - Rule 8.290 Dependency Mediation**

- (e) ~~Assignment~~Appointment of the Mediator.
- (1) ~~Selection of the Mediator~~Court Appointment. The ~~parties~~court, in the order of referral to mediation, shall mediate ~~appoint~~ with a Florida Supreme Court certified dependency mediator~~selected by rotation or by such other procedures as may be~~

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~~adopted by administrative order of the chief judge in the circuit in which the action is pending.~~

~~(2) Selection by the Court. Party Stipulation. In the event, Within 10 days of the filing of the order of referral to mediation, the parties cannot~~may agree upon a Florida Supreme Court certified dependency mediator, the plaintiff or petitioner shall, within 10 days after the lack of an agreement, so notify stipulation with the court and the court shall select a Florida Supreme Court certified dependency mediator designating:

- ~~i. 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~~
- ~~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.~~

### 2017 Committee Note

2017. The intent of the 2017 revisions is to ensure that all mediators who mediate court cases subject to the rule are certified to mediate dependency cases. These amendments do not preclude parties from mediating cases pre-suit with a mediator who is not a Florida Supreme Court certified dependency mediator.

## Florida Rules of Appellate Procedure - Rule 9.730 Appointment & Compensation of Mediator

(a) ~~Selection of the Mediator. Appointment by Agreement. The parties shall mediate~~Within 10 days of the court order of referral, the parties may file a stipulation with the court designating a Florida Supreme Court certified appellate 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~~Selection by Court. ~~In the event~~If the parties cannot agree upon a mediator ~~within 10 days of the order of referral, the appellant shall, within 10 days after lack of an agreement, so notify the court immediately and the court shall appoint a Florida Supreme Court certified appellate mediator selected by such procedure as is designated by administrative order. At the request of any party, the court shall appoint~~select a Florida Supreme Court certified appellate mediator who is licensed to practice law in any United States jurisdiction, unless otherwise requested upon agreement of the parties.

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(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 ~~selected~~appointed by the court cannot serve, a substitute mediator ~~may~~shall be agreed upon or ~~appointed~~selected 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*

2017. The intent of the 2017 revisions is to ensure that all mediators who mediate court cases subject to the rule are certified to mediate appellate cases.

2011. 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, 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.

### **Family Law Rules of Procedure - Rule 12.741 Mediation Rules**

(6) ~~Assignment~~Appointment of the Mediator.

(A) Selection of the Mediator. ~~Within 10 days of the order of referral, the parties may shall mediate with a Florida Supreme Court certified family mediator, agree upon a stipulation with the court designating:~~

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~~(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) Selection by the Court. ~~In~~ if the event the parties cannot agree upon a Florida Supreme Court certified family mediator within 10 days of the order of referral, the plaintiff or petitioner shall, within 10 days after the lack of agreement, so notify the court ~~within 10 days of the expiration of the period to agree on a mediator,~~ and the court shall appoint a Florida Supreme Court certified family 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) Substitute Mediator. ~~If a mediator agreed upon by the parties or appointed~~ selected by a court cannot serve, a substitute mediator ~~can~~ may 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.~~

### Committee Note

2017. The intent of the 2017 revisions is to ensure that all mediators who mediate court cases subject to the rule are certified to mediate family cases. These amendments do not preclude parties from mediating pre-suit cases with a mediator who is not a Florida Supreme Court certified family 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.