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## ADR Processes Rules – 8/08

### Florida Rules of Civil Procedure

#### 1.660 Scope and Purpose

These rules are intended to establish uniform guidelines applicable to forms of conflict resolution other than traditional litigation.

#### 1.670 Referral to ADR Process

(a) Referral by Presiding Judge. Except as hereinafter provided or as otherwise prohibited by law, the presiding judge may enter an order referring all or any part of a pending matter to:

- (1) Alternative dispute resolution (ADR) which process is to be selected by mutual agreement by the parties;
- (2) Mediation, pursuant to the rules of civil procedure specific to mediation;
- (3) Non-binding arbitration pursuant to rules of civil procedure specific to arbitration;
- (4) An ADR process or combination of ADR processes for which the judge has the authority to order.

In the event the presiding judge orders the parties to ADR generally, as described in subdivision (1), or to a specific ADR process or processes, other than mediation or non-binding arbitration, as described in subdivision (4), rules 1.660 – 1.690 shall apply.

(b) Default. Within 20 days of the order of referral to ADR, the parties may agree upon a stipulation with the court designating the ADR process and a neutral to conduct such process. If the parties are unable to agree on either the neutral or the ADR process, the plaintiff or petitioner shall so notify the court within 30 days of the order of referral to ADR, and the court shall appoint a certified mediator to mediate the case pursuant to the mediation rules.

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(c) “Alternative Dispute Resolution” means methods used to resolve disputes other than traditional litigation including:

(1) Arbitration, a process in which a neutral third person or panel, considers the facts and arguments presented by the parties and renders a binding or non-binding decision.

(2) Mediation, a process in which a neutral third person 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.

(3) Mini-Trial, a non-binding settlement process where each side makes a presentation of a summary of the evidence and testimony that would be produced at trial and, after argument of counsel, the parties attempt to negotiate an agreement.

(4) Neutral Evaluation, is a process in which a neutral selected by the parties who evaluates the case and identifies the strengths and weaknesses of the case and the likely outcome if the matter went to trial.

(5) Summary Jury Trial, a court supervised presentation before an advisory jury. After brief instruction from the presiding judge, the jury returns a decision, which the parties may use as a basis for further settlement discussions.

(7) Other alternative processes as agreed to by the.

COMMITTEE NOTE: The Supreme Court Committee on Alternative Dispute Resolution Rules and Policy recognizes that where appropriate, the crafting of a combination of dispute resolution processes or neutrals without creating an unreasonable barrier to the traditional court system may be helpful.

Additional processes which parties might consider

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include utilizing the services of an ombudsman, which

may involve investigating reported complaints, reporting findings, and/or helping to achieve equitable settlements.

## **1.680 Rules Common to All ADR Processes, Including Mediation and Arbitration**

(a) Except as limited by subdivision (f) or otherwise prohibited by law or rule, the parties to any pending matter may file a written stipulation to utilize an ADR process(es) for 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 ADR process shall begin within 60 days of the order of referral.

(2) Notice. Within 15 days after the designation of the neutral, the court or its designee, who may be the neutral, shall notify the parties in writing of the date, time, and place for the ADR process unless the order of referral specifies the date, time, and place.

(b) Motion to Dispense with ADR. A party may move, within 15 days after the order of referral, to dispense with ADR if:

(1) the issue to be considered has been previously subject to an ADR process between the same parties pursuant to Florida law;

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

(3) the order violates subdivision (f);

(4) there is a history of domestic violence which would compromise the ADR process or cause anyone's safety to be endangered; or

(5) other good cause is shown.

(c) Motion to Defer ADR. 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 the ADR process. Notice of the hearing shall be provided to all interested parties, including any neutral who has been appointed. The motion shall set forth, in detail, the facts and

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circumstances supporting the motion. The time for the ADR process shall be tolled until disposition of the motion.

(d) Disqualification of a Neutral. Any party may move to enter an order disqualifying a neutral for good cause. If the court rules that a neutral is disqualified from participating in a case, an order shall be entered setting forth the name of a qualified replacement. Nothing in this provision shall preclude neutrals from disqualifying themselves or refusing any assignment. The time for the ADR process shall be tolled during any periods in which a motion to disqualify is pending.

(e) Completion of ADR. ADR shall be completed within 45 days of the first session unless extended by order of the court or by stipulation of the parties.

(f) Exclusions from ADR. Under no circumstances may the following categories of actions be referred to ADR:

(1) Bond estreatures.

(2) Habeas corpus and extraordinary writs.

(3) Bond validations.

(4) Criminal contempt.

(5) Issues in cases of injunctions for protection unless specifically authorized by rule or statute

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

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

### **1.690. Procedures**

(a) Authority of the Neutral. The neutral shall have authority to commence and adjourn the ADR process. The neutral shall not have authority to hold any person in contempt or to in any way impose sanctions against any person.

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### (b) Conduct of the ADR Process.

(1) The parties, in consultation with the neutral, may establish the procedures for ADR consistent with court rules and standards.

(2) Individual parties or authorized representatives of corporate parties with full authority to resolve issues shall attend the ADR process unless excused in advance by the court or agreed to by the parties. If a party is a public entity required to conduct its business pursuant to chapter 286, Florida Statutes, that party shall be deemed to appear at a confidential ADR process 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.

(c) Orders. The neutral may issue instructions as are necessary for the expeditious and orderly conduct of the ADR process.

### **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;~~

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~~(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 1.720 – 1.750 apply to mediation of circuit and county court matters and issues and control over conflicting provisions in rule 1.660 – 1.670.

## **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.~~

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~~(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) 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 an award of mediator and attorneys' fees and other costs, against the party failing to appear. 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 stipulated by the parties or changed by order of the court, a party is deemed to appear at a mediation conference if the following persons are physically present:

- (1) The party or its representative having full authority to settle without further consultation.
- (2) The party's counsel of record, if any.

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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 up to the amount of the plaintiff's last demand or policy limits, whichever is less, without further consultation.
  
- (c) 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.
  
- (d) 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.
  
- (e) Communication with Parties. The mediator may meet and consult privately with any party or parties or their counsel.
  
- (f) 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; 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.

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- (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.

(g) **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.

### **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,

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attorney fees, or other appropriate remedies including entry of judgment on the agreement.

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## *Committee Notes*

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

### **Rule 1.750 County Court Actions**

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

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

(c) **Scheduling.** In small claims actions, the mediator shall be appointed and the mediation conference held during or immediately after the pretrial conference unless otherwise ordered by the court. In no event shall the mediation conference be held more than 14 days after the pretrial conference.

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

(e) **Appearance at Mediation.** In small claims actions, an attorney may appear on behalf of a party at mediation provided that the attorney has full authority to settle without further consultation. Unless otherwise ordered by the court, a nonlawyer representative may appear on behalf of a party to a small claims mediation if the

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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.

### **Rule 1.800** Applicability.

These rules apply to court connected arbitration cases regardless whether ordered by the court or selected by the parties and controls over conflicting provisions in rules 1.660 and 1.670.

### **Rule 1.810 Selection and Compensation of Arbitrators**

(a) Selection. The chief judge of the circuit or a designee shall maintain a list of qualified persons who have agreed to serve as arbitrators. Cases assigned to arbitration shall be assigned to an arbitrator or to a panel of three arbitrators. The court shall determine the number of

arbitrators and designate them within 15 days after service of the order of referral in the absence of an agreement by the parties. In the case of a panel, one of the arbitrators shall be appointed as the chief arbitrator. Where there is only one arbitrator, that person shall be the chief arbitrator.

(b) Compensation. The chief judge of each judicial circuit shall establish the compensation of arbitrators subject to the limitations in section 44.103(2), Florida Statutes.

### **Rule 1.820 Hearing Procedures for Non-Binding Arbitration**

(a) Authority of the Chief Arbitrator. The chief arbitrator shall have authority to commence and adjourn the arbitration hearing and carry out other such duties as are prescribed by section 44.103, Florida Statutes. The chief arbitrator shall not have authority to hold any person in contempt or to in any way impose sanctions against any person.

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### (b) Conduct of the Arbitration Hearing.

- (1) The chief judge of each judicial circuit shall set procedures for determining the time and place of the arbitration hearing and may establish other procedures for the expeditious and orderly operation of the arbitration hearing to the extent such procedures are not in conflict with any rules of court.
- (2) Hearing procedures shall be included in the notice of arbitration hearing sent to the parties and arbitration panel.
- (3) Individual parties or authorized representatives of corporate parties shall attend the arbitration hearing unless excused in advance by the chief arbitrator for good cause shown.

(c) Rules of Evidence. The hearing shall be conducted informally. Presentation of testimony shall be kept to a minimum, and matters shall be presented to the arbitrator(s) primarily through the statements and arguments of counsel.

(d) Orders. The chief arbitrator may issue instructions as are necessary for the expeditious and orderly conduct of the hearing. The chief arbitrator's instructions are not appealable. Upon notice to all parties the chief arbitrator may apply to the presiding judge for orders directing compliance with such instructions. Instructions enforced by a court order are appealable as are other orders of the court.

(e) Default of a Party. When a party fails to appear at a hearing, the chief arbitrator may proceed with the hearing and the arbitration panel shall render a decision based upon the facts and circumstances as presented by the parties present.

(f) Record and Transcript. Any party may have a record and transcript made of the arbitration hearing at that party's expense.

### (g) Completion of the Arbitration Process.

- (1) Arbitration shall be completed within 30 days of the first arbitration hearing unless extended by order of the court on motion of the chief

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arbitrator or of a party. No extension of time shall be for a period exceeding 60 days from the date of the first arbitration hearing.

- (2) Upon the completion of the arbitration process, the arbitrator(s) shall render a decision. In the case of the panel, a decision shall be final upon a majority vote of the panel.
  
- (3) Within 10 days of the final adjournment of the arbitration hearing, the arbitrator(s) shall notify the parties, in writing, of their decision. The arbitration decision may set forth the issues in controversy and the arbitrator('s)(s') conclusions and findings of fact and law. The arbitrator('s)(s') decision and the originals of any transcripts shall be sealed and filed with the clerk at the time the parties are notified of the decision.

(h) Time for Filing Motion for Trial. Any party may file a motion for trial. If a motion for trial is filed by any party, any party having a third-party claim at issue at the time of arbitration may file a motion for trial within 10 days of service of the first motion for trial. If a motion for trial is not made within 20 days of service on the parties of the decision, the decision shall be referred to the presiding judge, who shall enter such orders and judgments as may be required to carry out the terms of the decision as provided by section 44.103(5), Florida Statutes.

### *Committee Notes*

1988 Adoption. Arbitration proceedings should be informal and expeditious. The court should take into account the nature of the proceedings when determining whether to award costs and attorneys' fees after a trial de novo. Counsel are free to file exceptions to an arbitration decision or award at the time it is to be considered by the court. The court should consider such exceptions when determining whether to award costs and attorneys' fees. The court should consider rule 1.442 concerning offers of judgement and section 45.061, Florida Statutes (1985), concerning offers of settlement, as statements of public policy in deciding whether fees should be awarded.

1994 Amendment. The Supreme Court Committee on Mediation and Arbitration Rules recommends that a copy of the local arbitration procedures be disseminated to the local bar.

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2003 Amendment. The statutory reference in subdivision (h) is changed to reflect changes in statutory numbering.

2007 Amendment. Subdivision (h) is amended to avoid the unintended consequences for defendants with third-party claims who prevailed at arbitration but could not pursue those claims in a circuit court action because no motion for trial was filed despite a plaintiff or plaintiffs having filed a motion for trial that covered those claims. See *State Dept. of Transportation v. BellSouth Telecommunications, Inc.*, 859 So. 2d 1278 (Fla. 4<sup>th</sup> DCA 2003).

### **Rule 1.830 Voluntary Binding Arbitration**

(a) Absence of Party Agreement.

- (1) Compensation. In the absence of an agreement by the parties as to compensation of the arbitrator(s), the court shall determine the amount of compensation subject to the provisions of section 44.104(3), Florida Statutes.
- (2) Hearing Procedures. Subject to these rules and section 44.104, Florida Statutes, the parties may, by written agreement before the hearing, establish the hearing procedures for voluntary binding arbitration. In the absence of such agreement, the court shall establish the hearing procedures.

(b) Record and Transcript. A record and transcript may be made of the arbitration hearing if requested by any party or at the direction of the chief arbitrator. The record and transcript may be used in subsequent legal proceedings subject to the Florida Rules of Evidence.

(c) Arbitration Decision and Appeal.

- (1) The arbitrator(s) shall serve the parties with notice of the decision and file the decision with the court within 10 days of the final adjournment of the arbitration hearing.
- (2) A voluntary binding arbitration decision may be appealed within 30 days after service of the decision on the parties. Appeal is limited to the grounds specified in section 44.104(10), Florida Statutes.

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- (3) If no appeal is filed within the time period set out in subdivision (2) of this rule, the decision shall be referred to the presiding judge who shall enter such orders and judgments as required to carry out the terms of the decision as provided under section 44.104(11), Florida Statutes.