

**Florida Rules for Court-Appointed Arbitrators****Florida Ethical Standards for Alternative Dispute Resolution Neutrals****Part I Core Standards****11.000 Scope and Purpose**

These Rules provide ethical standards of conduct for court-appointed neutrals. They are intended to both guide neutrals in the performance of their services and instill public confidence in any ADR process. The public's use, understanding, and satisfaction with an ADR process can only be achieved if neutrals embrace the highest ethical principles. Whether the parties involved in ADR choose to resolve their dispute is secondary in importance to whether the neutral conducts the ADR process in accordance with these ethical standards. A neutral must comply with these core ethical standards as well as any other ethical standards which the Florida Supreme Court may adopt to govern a specific ADR method. Where more specific standards adopted by the Court exist, those standards shall prevail over these core ethical standards.

*Committee Note*

The growth of alternative dispute resolution has allowed professionals in this field to employ different processes that are tailored to the particular dispute or conflict. Those shifting roles should not compromise the basic tenets of the confidence and trust that participants and the public expect and deserve in using these various forms. For this reason, the following guidelines and characteristics are provided as core values. As a core they are not complete but rather provide a foundation from which more specific and appropriate guidelines can be added. As processes for conflict resolution continue to be created, so too should the ethical guidelines for the professional.

**11.005 Alternative Dispute Resolution Processes Defined**

“Alternative Dispute Resolution” means methods used to resolve disputes other than traditional litigation.

**11.010 Neutrals' Role**

A neutral shall not conduct a dispute resolution process other than the process to which the parties have either agreed or been ordered.

### **11.015 Misrepresentation**

A neutral shall not intentionally or knowingly misrepresent any material fact or circumstance in the course of conducting an ADR process.

### **11.020 Impartiality**

- (a) A neutral shall conduct the ADR process in an impartial manner and advise all parties of any circumstances bearing on possible bias, prejudice, or impartiality. Impartiality means freedom from favoritism or bias in word, action, and appearance.
- (b) A neutral shall not be influenced by outside pressure, bias, fear of criticism, or self-interest.
- (c) A neutral shall not give, accept or request a gift, favor, loan, or other item of value to or from a party, attorney, or any other person involved in and arising from any ADR process.
- (d) After accepting appointment, and for a reasonable period of time after the ADR process has concluded, a neutral shall avoid entering into family, business, or personal relationships which could affect impartiality or give the appearance of partiality, bias, or influence.
- (e) A neutral shall withdraw from an ADR process if the neutral can no longer be impartial.

### **11.025 Conflicts of Interest**

- (a) A neutral shall disclose any current, past, or future representation or professional relationship or the existence of a pending case with any party or attorney involved in the ADR process. Disclosure shall also be made of any financial interest.
- (b) A neutral shall disclose to the parties involved any close personal relationship or other circumstance which might reasonably raise a question as to the neutral's impartiality.

- (c) The burden of disclosure rests on the neutral. All such disclosures shall be made as soon as practical after the neutral becomes aware of the interest or relationship. After appropriate disclosure, the mediator may serve it 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) A neutral shall not use the ADR process to solicit, encourage, or otherwise incur future professional services with any party.

**11.030 Demeanor**

A neutral shall be patient, dignified, and courteous during the ADR process.

**11.035 Privacy**

- (a) Scope. A neutral shall maintain privacy of all information revealed during an ADR process except where disclosure is required or permitted by law or is agreed to by all parties.
- (b) Record Keeping. A neutral shall maintain privacy in the storage and disposal of records and shall not disclose any identifying information when materials are used for research, training, or statistical compilations.

**11.040 Advice, Opinions, or Information**

When a neutral believes a party does not understand or appreciate the party's legal rights or obligations, the neutral shall advise the party of the right to seek independent legal counsel.

**11.045 Fees and Expenses**

A neutral holds a position of trust. Fees shall be reasonable and be guided by the following general principles:

- (a) Any charges for ADR services based on time shall not exceed actual time spent or allocated.
- (b) Charges for costs shall be for those actually incurred.
- (c) When time or expenses involve two or more ADR processes on the

same day or trip, the time and expense charges shall be prorated appropriately.

(d) A neutral shall give the parties or their counsel a written explanation of any fees and costs prior to the ADR Process. The explanation shall include the:

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

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

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

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

(e) A neutral 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.

(f) No commissions, rebates, or similar remuneration shall be given or received by a neutral for a ADR referral.

(g) A neutral shall not charge a contingent fee or base a fee on the outcome of the process.

### **11.050 Conduct of ADR**

(a) Orientation Session. Upon commencement of the ADR session, a neutral shall:

(1) describe the ADR process and the role of the neutral;

(2) inform the participants the extent to which communications may be confidential.

(b) Adjournment or Termination. A neutral shall:

(1) adjourn or terminate an ADR process if any party is incapable of

participating meaningfully in the process;

(2) adjourn or terminate an ADR process if the physical safety of any person is endangered by the continuation of the ADR process.

### **11.055 Scheduling ADR Process**

A neutral shall schedule an ADR process in a manner that provides adequate time for the process. A neutral shall perform ADR services in a timely fashion, avoiding delays whenever possible. Before the expiration of the time initially set, the neutral shall ensure that the parties understand and consent to any change to the length of the process.

### **11.060 Information to the Court**

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

### **11.065. Compliance with Authority**

A neutral shall comply with all statutes, court rules, local court rules, and court and administrative orders relevant to the ADR process.

### **11.070 Improper Influence**

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

### **11.075. 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. A mediator shall not make claims of achieving specific outcomes or promises implying favoritism for the purpose of obtaining business.

### **11.080 Integrity and Impartiality**

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

### **11.085 Skill and Experience**

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

### **11.090 Concurrent Standards**

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

### **11.095 Relationship with Other Professionals**

A neutral shall respect the role of other professional disciplines in the ADR process and shall promote cooperation between neutrals and other professionals.

## **PART II Standards for Court-Appointed Arbitrators**

### **PART I ARBITRATOR QUALIFICATIONS**

#### **11.010 11.100 Arbitrator Qualifications**

Arbitrators shall be members of The Florida Bar, except where otherwise agreed by the parties. The chief arbitrator shall have been a member of The Florida Bar for at least five years. Individuals who are not members of The Florida Bar may serve as arbitrators only on an arbitration panel and then only upon the written agreement of all parties.

#### **11.020 11.110 Training**

All arbitrators, except as noted below, shall attend 4 hours of training in a program approved by the Supreme Court of Florida. This rule shall not preclude the parties from agreeing to use the services of an arbitrator who has not completed the required training. Any former Florida trial judge who has not completed the training shall be exempt from the training requirements upon submission of documentation of such experience to the chief judge. The Supreme Court or chief justice may grant a waiver of the training requirement to any group possessing special qualifications which obviate the necessity of such training.



(c) Continuing Obligations. The ethical obligations begin upon acceptance of the appointment and continue throughout all stages of the proceeding. In addition, whenever specifically set forth in these rules, certain ethical obligations begin as soon as a person is requested to serve as an arbitrator, and certain ethical obligations continue even after the decision in the case has been given to the parties.

#### **~~11.050~~ 11.140 Responsibilities to the Courts**

An arbitrator shall be candid, accurate, and fully responsive to a court concerning the arbitrator's qualifications, availability, and all other pertinent matters. An arbitrator shall observe all administrative policies, local rules of court, applicable procedural rules, and statutes. An arbitrator is responsible to the judiciary for the propriety of the arbitrator's activities and must observe judicial standards of fidelity and diligence. An arbitrator shall refrain from any activity which has the appearance of improperly influencing a court to secure placement on a roster or appointment to a case, including gifts or other inducements to court personnel.

#### **~~11.060~~ 11.150 The Arbitration Process**

(a) Avoidance of Delays. An arbitrator shall plan a work schedule so that present and future commitments will be fulfilled in a timely manner. An arbitrator shall refrain from accepting appointments when it becomes apparent that completion of the arbitration assignments accepted cannot be completed in a timely fashion. An arbitrator shall perform the arbitrator's services in a timely and expeditious fashion, avoiding delays whenever possible.

(b) Conduct of Proceedings.

- (1) An arbitrator shall conduct the proceedings evenhandedly and treat all parties with equality and fairness at all stages of the proceedings.
- (2) An arbitrator must afford a hearing which provides both parties the opportunity to present their respective positions pursuant to the arbitration rules.
- (3) An arbitrator should be patient and courteous to the parties, to their lawyers, and to the witnesses and should encourage similar conduct by all participants in the proceedings.

(c) Decision-Making.

- (1) An arbitrator should, after careful deliberation, decide all issues submitted for determination. An arbitrator should decide no other issues.
- (2) An arbitrator should not delegate the duty to decide to any other person.
- (3) If all parties agree upon a settlement of the issues in dispute and request an arbitrator to embody that agreement in an award, an arbitrator may do so,

but is not required to do so unless satisfied with the propriety of the terms of the settlement. Whenever an arbitrator embodies a settlement by the parties in an award, the arbitrator should state in the award that it is based on an agreement of the parties.

(d) The Award. The award should be definite, certain, and as concise as possible.

### **~~11.070~~ 11.160 Ex Parte Communication**

(a) General. Arbitrators communicating with the parties should avoid impropriety or the appearance of impropriety.

(b) When Permissible. Arbitrators should not discuss a case with any party in the absence of each other party, except in the following circumstances:

- (1) Discussions may be held with a party concerning such matters as setting the time and place of hearings or making other arrangements for the conduct of the proceedings. However, the arbitrator should promptly inform each other party of the discussion and should not make any final determination concerning the matter discussed before giving each absent party an opportunity to express its views.
- (2) If a party fails to be present at a hearing after having been given due notice, the arbitrator may discuss the case with any party who is present.
- (3) If all parties request or consent that such discussion take place.

(c) Written Communications. Whenever an arbitrator communicates in writing with one party, the arbitrator should at the same time send a copy of the communication to each other party. Whenever an arbitrator receives any written communication concerning the case from one party which has not already been sent to each other party, the arbitrator should do so.

### **~~11.080~~ 11.170 Impartiality**

(a) Impartiality. An arbitrator shall be impartial and advise all parties of any circumstances bearing on possible bias, prejudice, or impartiality. Impartiality means freedom from favoritism or bias in word, action, and appearance.

- (1) Arbitrators should conduct themselves in a way that is fair to all parties and should not be swayed by outside pressure, public clamor, fear of criticism, or self-interest.
- (2) An arbitrator shall withdraw from an arbitration if the arbitrator believes the arbitrator can no longer be impartial.

- (3) An arbitrator shall not give or accept a gift, request, favor, loan, or other item of value to or from a party, attorney, or any other person involved in and arising from any arbitration process.
- (4) After accepting appointment, and for a reasonable period of time after the decision of the case, an arbitrator should avoid entering into family, business, or personal relationships which could affect impartiality or give the appearance of partiality, bias, or influence.

(b) Conflicts of Interest and Relationships; Required Disclosures; Prohibitions

- (1) An arbitrator must disclose any current, past, or possible future representation or consulting relationship with any party or attorney involved in the arbitration. Disclosure must also be made of any pertinent pecuniary interest. All such disclosures shall be made as soon as practical after the arbitrator becomes aware of the interest or relationship.
- (2) An arbitrator must disclose to the parties or to the court involved any close personal relationship or other circumstance, in addition to those specifically mentioned earlier in this rule, which might reasonably raise a question as to the arbitrator's impartiality. All such disclosures shall be made as soon as practical after the arbitrator becomes aware of the interest or relationship.
- (3) The burden of disclosure rests on the arbitrator. After disclosure, the arbitrator may serve if both parties so desire. If the arbitrator believes or perceives that there is a clear conflict of interest, the arbitrator should withdraw, irrespective of the expressed desire of the parties.
- (4) An arbitrator shall not use the arbitration process to solicit, encourage, or otherwise incur future professional services with either party.

*Committee Notes*

The duty to disclose potential conflicts includes the fact of membership on a board of directors, full-time or part-time service as a representative or advocate, consultation work for a fee, current stock or bond ownership (other than mutual fund shares or appropriate trust arrangements), or any other pertinent form of managerial, financial or immediate family interest of the party involved. An arbitrator who is a member of a law firm is obliged to disclose any representational relationship the member firm may have had with the parties. Arbitrators establish personal relationships with many representatives, attorneys, arbitrators, 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.

**~~11.090~~ 11.180 Relationship with Other Professionals**

When there is more than one arbitrator, the arbitrators should afford each other the full opportunity to participate in all aspects of the proceedings.

#### **~~11.100~~ 11.190 Fees and Expenses**

An arbitrator occupies a position of trust with respect to the parties and the courts. In charging for services and expenses, the arbitrator must be governed by the same high standard of honor and integrity which applies to all other phases of the arbitrator's work. An arbitrator must keep total charges for services and expenses reasonable and consistent with the nature of the case or within statutory payment limitations.

#### **~~11.110~~ 11.200 Training and Education**

(a) Training. An arbitrator is obligated to acquire knowledge and training in the arbitration process, including an understanding of appropriate professional ethics, standards, and responsibilities. Upon request, an arbitrator is required to disclose the extent and nature of the arbitrator's training and experience.

(b) Continuing Education. It is important that arbitrators continue their professional education throughout the period of their active service. An arbitrator shall be personally responsible for ongoing professional growth, including participation in such continuing education as may be required by law.

(c) New Arbitrator Training. An experienced arbitrator should cooperate in the training of new arbitrators.

#### **~~11.120~~ 11.210 Advertising**

All advertising by an arbitrator must represent honestly the services to be rendered. No claims of specific results or promises which imply favoritism to one side should be made for the purpose of obtaining business. An arbitrator shall make only accurate statements about the arbitration process, its costs and benefits, and the arbitrator's qualifications.

### **PART III DISCIPLINE**

#### **~~11.130~~ 11.220 Chief Judge Responsibility Arbitrators**

Court-appointed arbitrators shall serve at the pleasure of the chief judge, who shall be responsible for enforcing the rules standards of conduct for court-appointed neutrals and court-appointed arbitrators ~~for arbitrators appointed pursuant to chapter 44,~~ Florida Statutes.

#### **11.230 Other Court-Appointed Neutrals**

Neutrals, other than mediators or arbitrators, who are appointed by the court shall serve at the pleasure of the presiding judge, who shall be responsible for enforcing the standards of conduct for court-appointed neutrals and court-appointed arbitrators.

*Committee Notes - 1994*

The Florida Supreme Court Standing Committee on Mediator and Arbitrator Rules believes that arbitrator discipline, unlike mediator discipline, should be administered by the chief judge rather than by a board appointed for that purpose. The primary reason for this distinction is that there is presently no statewide arbitrator certification process. Rather, arbitrators are made eligible by placement on a list by the chief judge. See Florida Rule of Civil Procedure 1.810(a). It was the feeling of the committee that a method of removal consistent with that of appointment, that is, discretion of the chief judge, would also be appropriate. The rules make the chief judge responsible for enforcing the rules of conduct for arbitrators appointed pursuant to chapter 44, Florida Statutes. The committee reserves the right to reconsider the effectiveness of this method of discipline after observing operation for a period of time. If this method of removal proves to be ineffective, a board to conduct discipline may need to be appointed. It should, however, be noted that a similar system for the removal of quasi-judicial officers exists in relation to masters, Florida Rule of Civil Procedure 1.490(a), child support enforcement officers, Florida Rule of Civil Procedure 1.491(c), and traffic magistrates, Florida Rule of Traffic Court 6.630(c).

Appeals from decisions of the chief judge shall be taken in the same manner as any other matter appealed from the chief judge.

Committee Notes – 200X

The Florida Supreme Court Committee on Alternative Dispute Resolution Rules and Policy believes that the discipline of court-appointed neutrals, other than mediators and arbitrators, should be administered by the presiding judge. The discipline of Supreme Court certified and court-appointed mediators remains under the jurisdiction of the Mediator Qualifications Board. The discipline of court-appointed arbitrators remains with the chief judge of the circuit. Since there presently is no statewide qualifications for neutrals other than for mediators or arbitrators, discretion of the presiding judge to discipline these other neutrals would be appropriate. The committee reserves the right to reconsider the effectiveness of this method of discipline after observing operation for a period of time.