

Proposed Revisions of Court Mediation Procedural Rules

The Committee on Alternative Dispute Resolution Rules and Policy (Committee) invites all interested persons to comment on proposed amendments to small claims, county, civil, family, juvenile, and appellate state court rules of procedure regarding mediation. The amendments are intended to protect the public by ensuring that any individual who mediates cases pending before any state court shall be subject to the ethical standards and discipline procedures in Parts II and III of the Florida Rules for Certified and Court-Appointed Mediators.

The amendments originated as a Committee work product that was circulated to the ADR community in July 2017. After receiving feedback and engaging in careful deliberation, the Committee revised its proposal to meet the interests of both the ADR and legal communities while continuing to meet the goals of the Long-Range Strategic Plan for the Florida Judicial Branch 2016-2021, to “maintain a professional, ethical and skilled judiciary and workforce.” The 2017 amendments proposed that all pending court cases be mediated by a Florida Supreme Court certified mediator. The 2019 amendments are offered instead of those amendments.

Please send comments for the Committee to the Florida Dispute Resolution Center (DRC) by July 8, 2019, to: DRCmail@flcourts.org; Florida Dispute Resolution Center, Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399; or fax: [\(850\) 922-9290](tel:8509229290).

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Florida Rules of Civil Procedure - Rule 1.710 Mediation Rules

(a) – (c) no change

(d) Rules for Certified and Court-Appointed Mediators. Any mediator who mediates a civil action that is pending before any state court is, as to that mediation, subject to the Rules for Certified and Court-Appointed Mediators, Parts II and III (Rules 10.200 – 10.900), irrespective of whether the mediator is certified, non-certified, or court-appointed.

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.

2019 Amendment. The amendment is intended to protect the public by ensuring that any mediator who mediates a civil action does so subject to the ethical standards the Supreme Court has imposed on all certified and court-appointed mediators irrespective of whether the mediator is certified, non-certified, or court-appointed. All individuals who mediate cases pending before any state court shall be subject to discipline and the procedures therefor set forth in Parts II and III (Rules 10.200 – 10.900).

Rule 1.750 County Court Actions

(a) – (b) no change

(c) Rules for Certified and Court-Appointed Mediators. Any mediator who mediates a county court action that is pending before any state court is, as to that mediation, subject to the Rules for Certified and Court-Appointed Mediators, Parts II and III (Rules 10.200 – 10.900), irrespective of whether the mediator is certified, non-certified, or court-appointed.

Substance of (c) moved to (d) and substance of (d) – (f) re-lettered.

Committee Notes

2019 Amendment. The amendment is intended to protect the public by ensuring that any mediator who mediates a county court action does so subject to the ethical standards the Supreme Court has imposed on all certified and court-appointed mediators irrespective of whether the mediator is certified, non-certified, or court-appointed. All individuals who mediate cases pending before any state court shall be subject to discipline and the procedures therefor set forth in Parts II and III (Rules 10.200 – 10.900).

Florida Small Claims Rules - Rule 7.090 Appearance; Defensive Pleadings; Trial Date

(a) – (e) no change

(f) Rules for Certified and Court-Appointed Mediators. Any mediator who mediates a small claims action that is pending before any state court is, as to that mediation, subject to the Rules for Certified and Court-Appointed Mediators, Parts II and III (Rules 10.200 – 10.900), irrespective of whether the mediator is certified, non-certified, or court-appointed.

Substance of (f) moved to (g) and substance of (g) re-lettered to add (h).

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.

2019 Amendment. The amendment is intended to protect the public by ensuring that any mediator who mediates a small claims action does so subject to the ethical standards the Supreme Court has imposed on all certified and court-appointed mediators irrespective of whether the mediator is certified, non-certified, or court-appointed. All individuals who mediate cases pending before any state court shall be subject to discipline and the procedures therefor set forth in Parts II and III (Rules 10.200 – 10.900).

Florida Rules of Juvenile Procedure - Rule 8.290 Dependency Mediation

(a) – (e) no change

(f) Rules for Certified and Court-Appointed Mediators. Any mediator who mediates a juvenile dependency action that is pending before any state court is, as to that mediation, subject to the Rules for Certified and Court-Appointed Mediators, Parts II and III (Rules 10.200 – 10.900), irrespective of whether the mediator is certified, non-certified, or court-appointed.

Substance of (f) moved to (g) and substance of (g) – (q) re-lettered.

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.

2019 Amendment. The amendment is intended to protect the public by ensuring that any mediator who mediates a juvenile dependency action does so subject to the ethical standards the Supreme Court has imposed on all certified and court-appointed mediators irrespective of whether the mediator is certified, non-certified, or court-appointed. All individuals who mediate cases pending before any state court shall be subject to discipline and the procedures therefor set forth in Parts II and III (Rules 10.200 – 10.900).

Florida Rules of Appellate Procedure - Rule 9.700 Mediation Rules

(a) – (e) no change

(f) Rules for Certified and Court-Appointed Mediators. Any mediator who mediates an appellate action that is pending before any state court is, as to that mediation, subject to the Rules for Certified and Court-Appointed Mediators, Parts II and III (Rules 10.200 – 10.900), irrespective of whether the mediator is certified, non-certified, or court-appointed.

Committee Notes

2019 Amendment. The amendment is intended to protect the public by ensuring that any mediator who mediates an appellate action does so subject to the ethical standards the Supreme Court has imposed on all certified and court-appointed mediators irrespective of whether the mediator is certified, non-certified, or court-appointed. All individuals who mediate cases pending before any state court shall be subject to discipline and the procedures therefor set forth in Parts II and III (Rules 10.200 – 10.900).

Family Law Rules of Procedure - Rule 12.741 Mediation Rules

(a) – (b)(5) no change

(b)(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.

(D) Rules for Certified and Court-Appointed Mediators. Any mediator who mediates a family action that is pending before any state court is, as to that mediation, subject to the Rules for Certified and Court-Appointed Mediators, Parts II and III (Rules 10.200 – 10.900), irrespective of whether the mediator is certified, non-certified, or court-appointed.

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.

Committee Notes

2019 Amendment. The amendment is intended to protect the public by ensuring that any mediator who mediates a family action does so subject to the ethical standards the Supreme Court has imposed on all certified and court-appointed mediators irrespective of whether the mediator is certified, non-certified, or court-appointed. All individuals who mediate cases pending before any state court shall be subject to discipline and the procedures therefor set forth in Parts II and III (Rules 10.200 – 10.900).