

Supreme Court of Florida

No. 75,151

IN RE: AMENDMENT TO FLORIDA RULES OF CIVIL
PROCEDURE 1.700-1.780 (MEDIATION).

[June 21, 1990]

PER CUIAM.

By administrative order of July 26, 1989, this Court appointed a special committee on mediation and arbitration rules as a standing committee of the Supreme Court. With that appointment, this Court further directed the committee to develop a report recommending changes in procedural rules governing mediation and arbitration, recommending standards of conduct governing mediators and arbitrators, and suggesting needed legislation to enhance alternative dispute resolution programs in Florida. The committee has filed its report on proposed rules changes with this Court. We published these proposed changes,

received comments thereon, heard oral arguments, and solicited and received additional comments from the committee.¹

The committee has worked diligently, tirelessly, and objectively in its efforts to fashion appropriate rules. The use of mediation and arbitration in conjunction with traditional legal procedures is currently a developing concept. As experience and use develop, additional rule changes will be likely.² We placed a heavy responsibility on our committee,

¹ In its report, the committee stated:

The Committee's proposed rule changes reflect a blend of three philosophical approaches. First, the Committee sought to take maximum advantage of the one year of practical experience Florida has had in court-sanctioned ADR procedures. Based on this experience, the Committee is recommending rather substantial deletions from certain parts of the old rules which, although originally implemented with the best of intentions, have proven to serve no real purpose as procedural guidelines. Second, the Committee sought to enhance the overall consensual atmosphere of ADR in Florida by putting more control of the process in the hands of the parties involved. Hence, suggested modifications of the rules have been made to allow more direct involvement by the parties in initiating mediation, selection of mediators, timing of the mediation conference, and initiating enforcement procedures. Finally, the Committee was keenly aware of the colloquial axiom, "If it ain't broke, don't fix it." Every effort was thus made to preserve the functions that are working.

² We recognize that the qualifications for mediators should be placed somewhere other than these rules of civil procedure. Other rules regarding the standards of conduct of mediators will be forthcoming, at which time it is likely that rule 1.760 will be relocated.

which, after argument, agreed to some suggested changes to its proposals. For the most part, we accept its final views.

Attached hereto, as an appendix, are the rules as amended and now approved by the Court. They shall become effective July 1, 1990.

It is so ordered.

EHRlich, C.J., and OVERTON, McDONALD, SHAW, BARKETT, GRIMES and KOGAN, J.J., Concur

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED. THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE RULES.

RULE 1.700 RULES COMMON TO MEDIATION OR ARBITRATION

- (a) Referral by Presiding Judge or by Stipulation. Except as hereinafter provided, the presiding judge may order refer any contested civil matter or selected issues referred for assignment 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, unless sooner ordered by the court
- (2) Notice. Within 10 days after the order of referral case has been referred for either mediation or arbitration, the court or its designee, who may be the mediator or arbitrator, shall notify the parties and either the mediator or arbitrator 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 service of the order of referral, to dispense with mediation and with or arbitration, respectively, 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
- (4) Other good cause is shown.
- (c) Motion to Waiver or Deferral of Mediation or Arbitration. Within 15 days of the court order of referral, assigning the case to mediation or arbitration, any party may file a motion with the court to defer or forego the proceeding process. The movant and shall set such the motion to defer for hearing prior to the date that mediation or arbitration has been ordered scheduled date for mediation or arbitration. with a notice of the hearing shall be provided to all interested parties, including any mediator or arbitrator that who has been appointed. Such 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) Calculation of Times. All times hereunder shall be calculated in accordance with Rule 1.090(a) Fla. R. iv. P.~~

~~(e) Disqualification of a Mediator or Arbitrator. Any party may move ~~the court~~ to enter an order disqualifying ~~disqualify~~ a mediator or an arbitrator for good cause, using the procedures of Fla. R. Civ. P. 1.432. ~~Mediators and arbitrators have a duty to disclose any fact bearing on their qualifications, including any fact which would be ground for~~~~

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 ~~limit the discretion of a~~ mediators or arbitrator² to ~~from disqualifying~~ themselves or refusing any assignment.

~~arbitrator may elect voluntary disqualification, which is final upon service upon the parties and the court.~~

The time for mediation or arbitration shall be tolled during any periods in which

~~is deferred pending determination of a~~

a motion to disqualify is pending.

RULE 1.710 MEDIATION RULES

(a) Completion of Mediation. Mediation shall be completed within ~~30~~ 45 days of the first mediation conference unless extended by order of the court or by stipulation of the parties. ~~on motion of the mediator or of a party. No extension of time shall be for a period exceeding 60 days from the first mediation conference. The mediator's report shall be filed immediately with the court upon its becoming binding on the parties pursuant to Rule 1.730(b).~~

(b) Exclusions from Mediation. The following ~~categories of claims actions~~ shall not be referred to mediation except upon petition of all parties:

- (1) Appeals from rulings of administrative agencies;
- (2) Bond estreatures;
- (3) Forfeitures of seized property;
- (4) Habeas corpus and extraordinary writs;

(5) Bond validations;

(6) Declaratory relief: or

~~(7) Any litigation expedited by statute or rule, except issues of parental responsibility~~

~~(7)~~ ~~(8)~~ Such ~~o~~Other matters as may be specified by administrative order of the chief judge in the circuit,

(c) Discovery. Discovery ~~pursuant to~~ ~~Rule~~ ~~1.280~~ ~~Fla. R. Civ. P.~~ may continue throughout mediation. ~~Such discovery may be delayed or deferred upon agreement of the parties. All discovery shall be held in abeyance, and the times tolled, upon submission of a written settlement agreement to the court.~~

RULE 1.720 MEDIATION PROCEDURES

(a) Interim or Emergency Relief. ~~A~~ ~~Either~~ 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** motions.

(b) Sanctions for Failure to Appear. ~~The court, upon written notice from the mediator that any party has failed to appear after receiving written notice and without good cause, may apply appropriate sanctions as provided by the Florida Rules of Civil Procedure, including taxing of the fees and costs of the mediator.~~ If a party fails to appear at a duly noticed mediation conference without a good cause, the court upon motion shall impose sanctions, including an award of mediator and attorney 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, 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: and~~
- ~~(2) The party's counsel of record, if any; and~~
- ~~(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.~~

- (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. ~~The mediator may suspend or terminate mediation whenever, in the opinion of the mediator, the matter is not appropriate for further mediation.~~
- (d) Counsel. The mediator shall at all times be in control of the mediation and the procedures to be followed in the mediation. Counsel ~~for each party may attend the mediation conference and~~ shall ~~at all times~~ be permitted to ~~privately~~ communicate ~~privately~~ with their clients. ~~Presence of counsel is not required and in the discretion of the mediator, mediation may proceed in the absence of counsel. 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. ~~With consent of the parties, the mediator may speak with designated third parties about substantive issues involved in the mediation. Mediators are not restricted in their communication with third parties concerning procedural or administrative matters.~~

(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 who does not meet the certification requirements of these rules 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.

(g) ~~(f)~~ Appointment and Compensation of the Mediator. The presiding judge may appoint any person as a mediator who meets the qualifications set forth in these rules. The presiding judge may also, in appropriate cases, appoint specialists or experts who are not court-appointed mediators to assist court-appointed mediators. The mediator may be compensated or be uncompensated, volunteer, a government employee or may be compensated according to the written agreement of the parties. 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 such written agreements providing for the mediator's compensation, or of any objections served on the mediator and other parties by any party within 15 days of the order referring the matter to mediation, 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) Report of No Agreement. In cases where If the parties do not reach any agreement as to any matter as a result of mediation, the mediator shall immediately report such the lack of an agreement to the court without any 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) ~~Report or Agreement. In cases where~~ If an agreement or partial agreement is reached, as to any matter or issue, including legal or factual issues to be determined by the court, such it agreement shall be reduced to writing⁷ and signed by the parties and their counsel, if any⁷, and be immediately thereafter submitted to the court. If counsel neither signs nor objects, in writing, to the agreement within 10 days of service on counsel, then the agreement is conclusively presumed to be approved by counsel and shall then be immediately submitted to the court. Once the agreement becomes binding upon the parties by their execution and that of their counsel, it may only be set aside by the court pursuant to these rules. The agreement shall set forth all relevant statements of fact and statements of future courses of conduct as agreed upon by the parties. The agreement shall be filed when required by law or with the parties' consent. If the agreement is not filed, a joint notice 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.
- (c) ~~Court's Action. Within 10 days after receiving the agreement, the court shall determine whether the terms are lawful, within the jurisdiction of the court, and, where court approval is required by law, in the best interests of all parties concerned, including minor children where appropriate. If the court has not filed a written objection within 10 days after receiving the report, the agreement shall become binding on the parties. If the judge rejects or fails to adopt any part of the agreement, either party may, within 10 days of receipt of the order, give notice to all parties declaring the agreement void.~~

Committee Notes

After making the determination called for in this rule, the court may consider it appropriate to take any of the following courses of action: approving or rejecting the agreement in whole or in part; holding an evidentiary hearing to determine the appropriate course of action; requiring the parties to return to mediation to settle any unresolved issues; modifying either the sanctions or remedies contained in the agreement; requiring the parties to submit any unresolved issues to arbitration under Rule 1.800, or setting the case for trial.

- (c) (d) Imposition of Sanctions. In the event of any breach or failure to perform under the stipulated agreement, as approved by the judge pursuant to subdivision (c)

~~of this rule, the sanctions agreed upon or such other remedy as the court may deem appropriate, shall be imposed by order of the court.~~ the court upon motion may impose sanctions, including costs, attorney fees, or other appropriate remedies including entry of judgment on the agreement.

RULE 1.740 FAMILY LAW MEDIATION

~~Every effort should be made to expedite mediation of parental responsibility issues. In cases in which there are complex or substantial tax, financial or property issues, the court shall refer such issues to a lawyer or Certified Public Accountant mediator. The court may refer parental responsibility issues to a non-lawyer mediator in such cases.~~

- (a) Applicability. This rule applies to the mediation of family matters and issues only and controls over conflictin provisions in rules 1.710, 1.720, and 1.730. For purposes of this rule, "family matters and issues" means issues in marriaue dissolution and Dost-dissolution proceedinas and in domestic Droceedinus between unmarried parents, unless excepted from mediation by statute or court rule.
- (b) Referral. Except as provided by law and this rule, all contested family matters and issues may be referred to mediation. Every effort should be made to expedite mediation of family issues.
- (c) Limitation on Referral to Mediation. Unless otherwise aured by the Darties. family matters and issues may be referred to a mediator or mediation program which charaes a fee only after the court has determined that the parties have the financial ability to pav a fee, This determination may be based upon the parties' financial affidavits or other financial information available to the court. When appropriate, the court shall apportion mediation fees between the Darties and shall state each party's share in the order of referral.
- (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 aureement 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 extended by order of the court.~~

~~(f) Report on Agreement.~~

~~(1) If agreement is reached as to any matter or issue, including a legal or factual issue 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. If counsel for any party is not present when the agreement is reached and does not sign the agreement or object in writing to the agreement within 10 days after receipt, the agreement is presumed to be approved by counsel and shall be filed with the court by the mediator. An objection shall be served on the mediator, the parties, and counsel.~~

~~(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.~~

RULE 1.750 SMALL CLAIMS MATTERS

~~(a) Applicability. This rule applies to the mediation of small claims matters and issues only and controls over conflicting provisions in rules 1.710, 1.720, and 1.730.~~

~~(a)(b) Scheduling. 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.~~

~~(b)(c) Settlement Authority. If a party gives counsel or another representative authority to settle the matter, the party need not appear in person. Counsel or the other representative may speak for the party in the mediation conference notwithstanding the limitations on counsel's participation contained in Rule 1.720(d).~~

~~(e)~~(d) Agreement. Any agreements reached as a result of small claims mediation shall be written in the form of a stipulation. After court review ~~pursuant to Rule 1.73 (e)~~, the stipulation shall be entered as an order of the court.

RULE 1.760 MEDIATOR QUALIFICATIONS

(a) County Court Mediators. For certification ~~by the Supreme Court~~, a mediator of county court matters must:

(1) ~~have~~ Completed a minimum of ~~a~~ 20 hours in a training program certified by the Supreme Court; ~~and~~

(2) ~~have~~ Observed a minimum of four county court mediation conferences conducted by a court certified mediator; ~~and (4) have conducted four county court a~~ mediation conferences under the supervision and observation of a court certified mediator; and

~~(3) have co-mediated a minimum of three mediation conferences with a court certified mediator; and~~

~~(3) (5) have been certified by the Chief Judge of the Circuit pursuant to Section 44.302(3), Florida Statutes (1987)~~ Be of good moral character; or

~~(4) (6)~~ Be certified as a circuit court or family mediator.

(b) Family Mediators. For certification ~~by the Supreme Court~~, a mediator of family and dissolution of marriage issues must:

~~(1) (3) have~~ Completed a minimum of 40 hours in a family mediation training ~~prouram~~ course certified by the Supreme Court; ~~or have received a Masters Degree in family mediation from an accredited college or university; and~~

~~(2) (1)~~ Have a masters degree or doctorate in social work, mental health, behavioral or social sciences; or be a physician certified to practice adult or child psychiatry; or be an attorney or a certified public accountant licensed to practice in any United States jurisdiction; and ~~(2)~~ have at least four years practical experience in one of the ~~above~~ aforementioned fields; ~~and or have~~

eight years family mediation experience with a minimum of ten mediations per year:

- ~~(3) Observe two family mediations conducted by a certified family mediator and conduct two family mediations under the supervision and observation of a certified family mediator: and~~
- ~~(4) have been certified by the Chief Judge of the Circuit pursuant to Section 44.302(3):~~ Be of good moral character.

(c) Circuit Court Mediators. For certification ~~by the Supreme Court, a the~~ mediator of circuit court matters, other than family matters, must:

~~(1) (2)~~ Complete a minimum of a 40 hours in a circuit court mediation training program certified by the Supreme Court;

~~(2) (1) be a former judge of a trial court who was a member of the bar in the state in which the judge presided, or~~ Be a member in good standing of the Florida Bar with at least five years of Florida practice; and and be an active member of the Florida Bar within one year of application for certification. This paragraph notwithstanding, the chief judge, upon written request setting forth reasonable and sufficient grounds, may certify as a circuit court mediator a retired judge who was a member of the bar in the state in which the judge presided. The judge must have been a member in good standing of the bar of another state for at least five years immediately preceding the year certification is sought and must meet the training requirements of subsection (1);

~~(3) Observe two circuit court mediations conducted by a certified circuit mediator and conduct two circuit mediations under the supervision and observation of a certified circuit court mediator: and~~

~~(4) Be of good moral character.~~

(d) Special Conditions. ~~Prior to January 1, 1989, the Chief Judge of each Circuit may certify any mediator who is currently mediating in an established program and who~~ Mediators who have been duly certified as circuit court or family mediators before July 1, 1990, shall be deemed qualified as circuit court or family mediators pursuant to these rules.

- ~~(1) has been actively engaged in the practice of mediation for the preceeding year; and~~
- ~~(2) completes the minimum training specified in these rules for the particular type of mediation. Mediators presently practicing pursuant to section (1) of this subsection may continue to do so for no more than 6 months past the date upon which the Supreme Court certifies a training program appropriate to their needs. Such mediators may continue to practice mediation after such period if they satisfactorily complete requirements of such training programs, including successful completion of a form of examination approved by the Supreme Court of Florida. Such mediators may continue to practice mediation in the field of prior practice.~~

~~RULE 1.770 STANDARDS FOR MEDIATION TRAINING PROGRAMS~~

- ~~(a) Circuit Court Mediators. Mediation training for mediators of Circuit Court matters, other than family matters, should consist of a minimum of 40 hours training in a program approved by the Supreme Court. That training should address the following:
 - ~~(1) mediation theory~~
 - ~~(2) mediation process and techniques~~
 - ~~(3) standards of conduct for mediators~~
 - ~~(4) conflict management and intervention skills~~
 - ~~(5) community resources and referral processes~~
 - ~~(6) successful completion of an examination at such time as a form of examination shall have been approved by the Supreme Court of Florida.~~~~
- ~~(b) Family Mediators. Mediation training for mediators of family matters should consist of a minimum of 40 hours of training in a program approved by the Supreme Court. That training should address those areas required in subsection (c) of this rule and in addition the following:
 - ~~(1) psychological issues in separation, divorce and family dynamics~~
 - ~~(2) issues concerning the needs of children in the context of divorce~~~~

- ~~(3) family law, including issues of custody, child support, and asset evaluation and distribution as it relates to divorce~~
 - ~~(4) family economics~~
 - ~~(5) successful completion of an examination at such time as a form of examination shall have been approved by the Supreme Court of Florida.~~
- ~~(c) County Court Mediators. Mediation training for county court mediators should consist of a minimum of 20 hours training in a program approved by the Supreme Court. That training should address the following:~~
- ~~(1) written and oral communication~~
 - ~~(2) mediation theory~~
 - ~~(3) the mediation process and techniques~~
 - ~~(4) standards of conduct for mediators~~
 - ~~(5) conflict management and intervention skills~~
 - ~~(6) the court process~~
 - ~~(7) community resources and referral processes~~
 - ~~(8) successful completion of an examination at such time as a form of examination shall have been approved by the Supreme Court of Florida.~~
- ~~(d) Suspension of Examination Requirement. The requirement of successful completion of an examination is suspended until a form of examination has been approved by the Supreme Court of Florida. Upon approval of a form of examination, practicing mediators, who have previously completed a course of training later approved by the Supreme Court of Florida, will not be required to retake such a course if they successfully complete the approved form of examination.~~

~~RULE 1.700 DUTIES OF THE MEDIATOR~~

- ~~(a) The mediator has a duty to define and describe the process of mediation and its cost during an orientation session with the parties before the mediation conference begins. The orientation should include the following:~~

- ~~(1) the differences between mediation and other forms of conflict resolution, including therapy and counseling;~~
 - ~~(2) the circumstances under which the mediator may meet alone with either of the parties or with any other person;~~
 - ~~(3) the confidentiality provision as provided by Florida law;~~
 - ~~(4) the duties and responsibilities of the mediator and of the parties;~~
 - ~~(5) the fact that any agreement reached will be reached by mutual consent of the parties;~~
 - ~~(6) the information necessary for defining the disputed issues.~~
- ~~(b) The mediator has a duty to be impartial, and to advise all parties of any circumstances bearing on possible bias, prejudice or impartiality.~~

Original Proceeding - Florida Rules of Civil Procedure

Lawrence M. Watson, Jr., Chairman, Supreme Court Standing
Committee on Mediation and Arbitration Rules, Orlando, Florida,

Petitioner

Comments on Proposed Amendments:

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