



**STATE OF FLORIDA
SEVENTH JUDICIAL CIRCUIT
Volusia County Courthouse Annex
125 East Orange Avenue
Daytona Beach, Florida 32114**

**Michael S. Orfinger
Circuit Judge**

Phone: (386) 257-6091

November 17, 2020

VIA E-MAIL

Hon. Lisa T. Munyon, Chair
Florida Supreme Court Workgroup of the
Continuity of Court Operations & Proceedings
During and After Covid-19
425 North Orange Avenue, Suite 1130
Orlando, Florida 32801-1515
Email: 40orange@ninthcircuit.org

Re: Rules of Procedure Relating to Alternative Dispute Resolution

Dear Judge Munyon:

I hope this letter finds you well. I am writing to you as Chair of the Florida Supreme Court's Committee on Alternative Dispute Resolution Rules and Policy (Committee). The Committee appreciates the hard work of the Florida Supreme Court Workgroup of the Continuity of Court Operations & Proceedings During and After Covid-19 (Workgroup), and has asked me to communicate with you. The Committee has undertaken a review of the procedural rules regarding mediation in small claims, county court, circuit, family, juvenile, and appellate cases to determine what amendments are necessary to codify remote mediation proceedings. We understand the Workgroup is reviewing all court rules toward the same goal.

I am attaching to this e-mail the amendments the Committee is proposing. The document is in Microsoft Word format so that you can view it with and without the Committee's edits. We hope the Workgroup will find these revisions helpful to its mission, and that you will advance them to the Court for adoption.

RECEIVED, 07/01/2021 09:57:28 AM, Clerk, Supreme Court

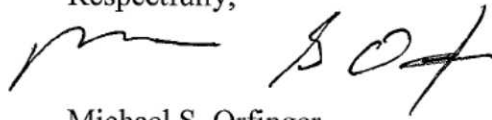
Honorable Lisa T. Munyon, Chair

November 17, 2020

Page 2

Please let me know if you have any questions or would like to discuss the Committee's initiatives.

Respectfully,

A handwritten signature in black ink, appearing to read 'M. Orfinger', written in a cursive style.

Michael S. Orfinger
Circuit Judge

Attachment

CC: Tina White, Workgroup Lead Staff
Oscar A. Sanchez, Chair, The Florida Bar ADR Section
Susan Marvin, Florida Dispute Resolution Center

State Court Rules of Procedure Relating to Mediations –

Contents

Florida Rules of Civil Procedure (rules 1.700-750)	1
Rule 1.700 Rules Common to Mediation and Arbitration	1
Rule 1.710 Mediation Rules	3
Rule 1.720 Mediation Procedures	3
Rule 1.730 Completion of Mediation.....	6
Rule 1.750 County Court Actions.....	7
Florida Small Claim Rules (rules 7.090 F-G)	8
Rule 7.090 Appearance; Defensive Pleadings; Trial Date.....	8
Florida Rules of Juvenile Procedure (rule 8.290).....	10
Rule 8.290 Dependency Mediation	10
Florida Rules of Appellate Procedure (rules 9.700-740).....	13
Rule 9.700 Mediation Rules.....	13
Rule 9.710 Eligibility for Mediation	14
Rule 9.720 Mediation Procedures	15
Rule 9.730 Appointment and Compensation of the Mediator.....	16
Rule 9.740 Completion of Mediation.....	17
Florida Family Law Rules of Procedure (rules 12.740-741)	17
Rule 12.740 Family Mediation	17
Rule 12.741 Mediation Rules.....	19

Florida Rules of Civil Procedure (rules 1.700-750)

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.~~ Such

court order or written stipulation may provide for mediation or arbitration in person, remotely via audio or audio-video communications technology, or a combination thereof.

- (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 manner, 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;
 - (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.

Committee Note

2020 Amendment. The phrase “audio or audio-video communications technology” is added to the rule to make the rule consistent with amendments to the Rules of Judicial Administration.

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.
 - (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) Appearance at Mediation. ~~Unless otherwise permitted by court order or stipulated by the parties in writing, a~~ party is deemed to appear at a mediation conference if the following persons are physically present or, if permitted by court order or written stipulation of the parties, present via audio or audio-video communications technology:
 - (1) The party or a party 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 in an amount up to the amount of the plaintiff's last demand or policy limits, whichever is less, without further consultation.
- (c) Party Representative Having Full Authority to Settle. A "party representative having full authority to settle" shall mean the final decision maker with respect to all issues presented by the case who has the legal capacity to execute a binding settlement agreement on behalf of the party. Nothing herein shall be deemed to require any party or party representative who appears at a mediation conference in compliance with this rule to enter into a settlement agreement.
- (d) Appearance by Public Entity. If a party to mediation is a public entity required to operate in compliance with chapter 286, Florida Statutes, that party shall be deemed to appear at a mediation conference by the physical presence, or if permitted by court order or written stipulation of the parties, presence via audio or audio-video communications technology, 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.
- (e) Certification of Authority. Unless otherwise stipulated by the parties, each party, 10 days prior to appearing at a mediation conference, shall file with the court and serve all parties a written notice identifying the person or persons who will be attending appearing at the mediation conference as a party representative or as an insurance carrier representative, and confirming that those persons have the authority required by subdivision (b).
- (f) 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 award of mediation fees, attorneys' fees, and costs, against the party failing to appear. The failure to file a confirmation of authority required under subdivision (e) above, or failure of the persons actually identified in the confirmation to appear at the mediation conference, shall create a rebuttable presumption of a failure to appear.
- (g) 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.
- (h) 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.

(i) Communication with Parties or Counsel. The mediator may meet and consult privately with any party or parties or their counsel.

(j) 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, 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) 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.

(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.

(k) 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.

Committee Notes

2020 Amendment. The phrase "audio or audio-video communications technology" is added to the rule to make the rule consistent with amendments to the Rules of Judicial Administration.

2011 Amendment. Mediated settlement conferences pursuant to this rule are meant to be conducted when the participants actually engaged in the settlement negotiations have full authority to settle the case without further consultation. New language in subdivision (c) now defines “a party representative with full authority to settle” in two parts. First, the party representative must be the final decision maker with respects to all issues presented by the case in question. Second, the party representative must have the legal capacity to execute a binding agreement on behalf of the settling party. These are objective standards. Whether or not these standards have been met can be determined without reference to any confidential mediation communications. A decision by a party representative not to settle does not, in and of itself, signify the absence of full authority to settle. A party may delegate full authority to settle to more than one person, each of whom can serve as the final decision maker. A party may also designate multiple persons to serve together as the final decision maker, all of whom must appear at mediation.

New subdivision (e) provides a process for parties to identify party representative and representatives of insurance carriers who will be attending the mediation conference on behalf of parties and insurance carriers and to confirm their respective settlement authority by means of a direct representation to the court. If necessary, any verification of this representation would be upon motion by a party or inquiry by the court without involvement of the mediator and would not require disclosure of confidential mediation communications. Nothing in this rule shall be deemed to impose any duty or obligation on the mediator selected by the parties or appointed by the court to ensure compliance.

The concept of self-determination in mediation also contemplates the parties’ free choice in structuring and organizing their mediation sessions, including those who are to participate. Accordingly, elements of this rule are subject to revision or qualification with the mutual consent of the parties.

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. Signatures may be original, electronic, or facsimile and in counterparts. 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, attorney fees, or other appropriate remedies including entry of judgment on the agreement.

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 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, or if permitted by court order or written stipulation of the parties, present via audio or audio-video communications technology.

- (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. Signatures may be original, electronic, or facsimile and in counterparts

Committee Note

2020 Amendment. The phrase “audio or audio-video communications technology” is added to the rule to make the rule consistent with amendments to the Rules of Judicial Administration.

Florida Small Claim Rule 7.090

Rule 7.090 Appearance; Defensive Pleadings; Trial Date

(a) Appearance. On the date and time appointed in the summons/notice to appear, the plaintiff and defendant shall appear personally, by counsel, subject to subdivision (b).

(b) Notice to Appear; Pretrial Conference. The summons/notice to appear shall specify that the initial appearance shall be for a pretrial conference. The initial pretrial conference shall be set by the clerk not more than 50 days from the date of the filing of the action. In the event the summons/notice to appear is non-served and the return of service is filed 5 days before the pretrial conference, the pretrial conference shall be canceled by the court as to any non-served party. The plaintiff may request a new summons/notice to appear and include a new initial appearance date for the pretrial conference. The pretrial conference may be managed by nonjudicial personnel employed by or under contract with the court. Nonjudicial personnel must be subject to direct oversight by the court. A judge must be available to hear any motions or resolve any legal issues. At the pretrial conference, all of the following matters shall be considered:

- (1) The simplification of issues.
- (2) The necessity or desirability of amendments to the pleadings.
- (3) The possibility of obtaining admissions of fact and of documents that avoid unnecessary proof.
- (4) The limitations on the number of witnesses.
- (5) The possibilities of settlement.
- (6) Such other matters as the court in its discretion deems necessary.

Form 7.322 shall and form 7.323 may be used in conjunction with this rule.

(c) Defensive Pleadings. Unless required by order of court, written pretrial motions and defensive pleadings are not necessary. If filed, copies of such pleadings shall be served on all other parties to the action at or prior to the pretrial conference or within such time as the court may designate. The filing of a motion or a defensive pleading shall not excuse the ~~personal~~ appearance of a party or attorney on the initial appearance date (pretrial conference).

(d) Trial Date. The court shall set the case for trial not more than 60 days from the date of the pretrial conference. Notice of at least 10 days of the time of trial shall be given. The parties may stipulate to a shorter or longer time for setting trial with the approval of the court. This rule does not apply to actions to which chapter 51, Florida Statutes, applies.

(e) Waiver of Appearance at Pretrial Conference. Where all parties are represented by an attorney, counsel may agree to waive ~~in person personal~~ or remote appearance at the initial pretrial conference, if a written agreement of waiver signed by all attorneys is presented to the court prior to or at the pretrial conference. The agreement shall contain a short statement of the disputed issues of fact and law, the number of witnesses expected to testify, an estimate of the time needed to try the case, and any stipulations of fact. The court shall forthwith set the case for trial within the time prescribed by these rules.

(f) Appearance at Mediation; Sanctions. In small claims actions, an attorney may appear on behalf of a party at mediation if 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 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. Mediation may take place at the pretrial conference, either in person or, if permitted by court order or written stipulation of the parties, via audio or audio-video communications technology. Whoever appears for a party must have full authority to settle. Failure to comply with this subdivision may result in the imposition of costs and attorney fees incurred by the opposing party.

(g) 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. Signatures may be original, electronic or facsimile and in counterparts.

Committee Notes

2020 Amendment. The phrase "audio or audio-video communications technology" is added to the rule to make the rule consistent with amendments to the Rules of Judicial Administration.

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.

Florida Rules of Juvenile Procedure (rule 8.290)

Rule 8.290 Dependency Mediation

(a) Definitions. The following definitions apply to this rule:

- (1) “Dependency matters” means proceedings arising under Chapter 39, Florida Statutes.
- (2) “Dependency mediation” means mediation of dependency matters.
- (3) “Mediation” means a process whereby a neutral third person called a mediator 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.

(b) Applicability. This rule applies only to mediation of dependency matters.

(c) Compliance with Statutory Time Requirements. Dependency mediation shall be conducted in compliance with the statutory time requirements for dependency matters.

(d) Referral. Except as provided by this rule, all matters and issues described in subdivision (a)(1) may be referred to mediation. All referrals to mediation shall be in written form, shall advise the parties of their right to counsel, ~~and~~ shall set a date for hearing before the court to review the progress of the mediation, and may provide for mediation in person, remotely via audio or audio-video communications technology, or a combination thereof. The mediator or mediation program shall be appointed by the court or stipulated to by the parties. If the court refers the matter to mediation, the mediation order shall address all applicable provisions of this rule. The mediation order shall be served on all parties and on counsel under the provisions of the Florida Rules of Juvenile Procedure.

(e) Appointment of the Mediator.

(1) Court Appointment. The court, in the order of referral to mediation, 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.

(2) Party Stipulation. Within 10 days of the filing of the order of referral to mediation, the parties may agree upon a stipulation with the court designating:

- (A) 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

(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.

- (f) Fees. Dependency mediation referrals may be made to a mediator or mediation program that charges a fee. Any order of referral to a mediator or mediation program charging a fee shall advise the parties that they may timely object to mediation on grounds of financial hardship. On the objection of a party or the court's own motion, the court may, after considering the objecting party's ability to pay and any other pertinent information, reduce or eliminate the fee.
- (g) Objection to Mediation. Within 10 days of the filing of the order of referral to mediation, any party or participant ordered to mediation may make a written objection to the court about the order of referral if good cause for such objection exists. If a party objects, mediation shall not be conducted until the court rules on the objection.
- (h) Scheduling. The mediation conference may be held at any stage of the proceedings. Unless otherwise scheduled by the court, the mediator or the mediation program shall schedule the mediation conference.
- (i) Disqualification of the Mediator. Any party may move to enter an order disqualifying a mediator for good cause. If the court rules that a mediator is disqualified from mediating a case, an order shall be entered with the name of a qualified replacement. Nothing in this provision shall preclude mediators from disqualifying themselves or refusing any assignment.
- (j) Substitute Mediator. 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.
- (k) Discovery. Unless stipulated by the parties or ordered by the court, the mediation process shall not suspend discovery.
- (l) Appearances.
 - (1) Order naming or prohibiting attendance of parties. The court shall enter an order naming the parties and the participants who must appear at the mediation and any parties or participants who are prohibited from attending-appearing at the mediation. Additional participants may be included by court order or by mutual agreement of all parties. Such order may provide for mediation in person, remotely via audio or audio-video communications technology, or a combination thereof.

(2) ~~Physical Presence~~ presence of adult parties and participants. Unless otherwise agreed to by the parties or ordered by the court, any party or participant ordered to mediation shall be ~~physically~~ present at the mediation conference either in person or, if permitted by court order or written stipulation of the parties, via audio or audio-video communications technology. Persons representing an agency, department, or program must have full authority to enter into an agreement that shall be binding on that agency, department, or program. In the discretion of the mediator, and with the agreement of the attending parties, dependency mediation may proceed in the absence of any party or participant ordered to mediation.

(3) Appearance of counsel. In the discretion of the mediator, and with the agreement of the attending parties, dependency mediation may proceed in the absence of counsel, unless otherwise ordered by the court.

(4) Appearance of child. The court may prohibit the child from appearing at mediation upon determining that such appearance is not in the best interest of the child. No minor child shall be required to appear at mediation unless the court has previously determined by written order that it is in the child's best interest to be physically present. The court shall specify in the written order of referral to mediation any special protections necessary for the child's appearance.

(5) Sanctions for failure to appear. If a party or participant ordered to mediation fails to appear at a duly noticed mediation conference without good cause, the court, on motion of any party or on its own motion, may impose sanctions. Sanctions against the party or participant failing to appear may include one or more of the following: contempt of court, an award of mediator fees, an award of attorney fees, an award of costs, or other remedies as deemed appropriate by the court.

(m) Caucus with Parties and Participants. During the mediation session, the mediator may meet and consult privately with any party, participant, or counsel.

(n) Continuances. The mediator may end the mediation session at any time and may set new times for reconvening the mediation. No further notification shall be required for parties or participants present at the mediation session.

(o) Report on Mediation.

(1) If agreement is reached on all or part of any matter or issue, including legal or factual issues to be determined by the court, the agreement shall be immediately reduced to writing, signed by the attending parties, and promptly submitted to the court by the mediator with copies to all parties and counsel. Signatures may be original, electronic or facsimile and in counterparts.

(2) 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.

- (p) Court Hearing and Order On Mediated Agreement. On receipt of a full or partial mediation agreement, the court shall hold a hearing and enter an order accepting or rejecting the agreement consistent with the best interest of the child. The court may modify the terms of the agreement with the consent of all parties to the agreement.
- (q) Imposition of Sanctions on Breach of Agreement. In the event of any breach or failure to perform under the court-approved agreement, the court, on a motion of any party or on its own motion, may impose sanctions. The sanctions may include contempt of court, vacating the agreement, imposition of costs and attorney fees, or any other remedy deemed appropriate by the court.

Committee Notes

2020 Amendment. The phrase “audio or audio-video communications technology” is added to the rule to make the rule consistent with amendments to the Rules of Judicial Administration.

1997 Adoption. In considering the provision regarding the appearance of the child found in subdivision (l)(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.

Florida Rules of Appellate Procedure (rules 9.700-740)

Rule 9.700 Mediation Rules

- (a) Applicability. Rules 9.700 – 9.740 apply to all appellate courts, including circuit courts exercising jurisdiction under rule 9.030(c), district courts of appeal, and the Supreme Court of Florida.
- (b) Referral. The court, upon its own motion or upon motion of a party, may refer a case to mediation at any time. Such order or motion may provide for mediation in person, remotely via audio or audio-video communications technology or a combination thereof. A ~~Such~~ motion from a party shall contain a certification that the movant has consulted

opposing counsel or unrepresented party and that the movant is authorized to represent that opposing counsel or unrepresented party:

- (1) has no objection;
 - (2) objects and cites that specific reasons for objections; or
 - (3) will promptly file an objection.
- (c) Time Frames for Mediation. The first mediation conference shall be commenced within 45 days of referral by the court, unless the parties agree to postpone mediation until after the period for filing briefs has expired. The mediation shall be completed within 30 days of the first mediation conference. These times may be modified by order of the court.
- (d) Tolling of Times. Unless otherwise ordered, or upon agreement of the parties to postpone mediation until after the expiration of time for filing the appellate briefs, all times under these rules for the processing of cases shall be tolled for the period of time from the referral of a case to mediation until mediation ends pursuant to section 44.404, Florida Statutes. The court, by administrative order, may provide for additional tolling of deadlines. A motion for mediation filed by a party within 30 days of the notice of appeal shall toll all deadlines under these rules until the motion is ruled upon by the courts.
- (e) Motion to Dispense with Mediation. A motion to dispense with mediation may be served not later than 10 days after the discovery of the facts which constitute the grounds for the motion, if:
- (1) the order violates rule 9.710; or
 - (2) other good cause is shown.

Committee Note

2020 Amendment. The phrase "audio or audio-video communications technology" is added to the rule to make the rule consistent with amendments to the Rules of Judicial Administration.

Rule 9.710 Eligibility for Mediation

Any case filed may be referred to mediation at the discretion of the court, but under no circumstances may the following categories of action be referred:

- (a) Criminal and post-conviction cases.
- (b) Habeas corpus and extraordinary writs.
- (c) Civil or criminal contempt.
- (d) Involuntary civil commitments of sexually violent predators.
- (e) Collateral criminal cases.
- (f) Other matters as may be specified by administrative order.

Rule 9.720 Mediation Procedures

(a) Appearance. 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 or, if permitted by court order or written stipulation of the parties, presence via audio or audio-video communications technology 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 changed by order of the court, a party is deemed to appear at a mediation conference by the physical presence or, if permitted by court order or written stipulation of the parties, presence via audio or audio-video communications technology of the following persons: 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 trial or appellate counsel of record, if any. If a party has more than one counsel, the appearance of only one counsel is required.
- (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.

(b) Sanctions. If a party fails to appear at a duly noticed mediation conference without good cause, the court, upon motion of a party or upon its own motion, may impose sanctions, including, but not limited to, any or all of the following, against the party failing to appear:

- (1) An award of mediator and attorney fees and other costs or monetary sanctions.
- (2) The striking of briefs.
- (3) Elimination of oral argument.
- (4) Dismissal or summary affirmance.

(c) Scheduling of Adjournments. Consistent with the time frames established in rule 9.700(c) and after consulting with the parties, the mediator shall set the initial conference date. The mediator may adjourn the mediation conference at any time and may set times for reconvening the adjourned conference. The mediator shall notify the parties in writing of the date, time, and place of any mediation conference, except no further notification is required for parties present at an adjourned mediation conference.

(d) Control of Procedures. The mediator shall at all times be in control of the procedures to be followed in the mediation.

(e) Communication with Parties. The mediator may meet and consult privately with any party or parties or their counsel. Counsel shall be permitted to communicate privately with their clients.

- (f) Party Representative Having Full Authority to Settle. Except as provided in subdivision (a) as to public entities, a “party or its representative having full authority to settle” shall mean the final decision maker with respect to all issues presented by the case who has the legal capacity to execute a binding settlement agreement on behalf of the party. Nothing herein shall be deemed to require any party or party representative who appears at a mediation conference in compliance with this rule to enter into a settlement agreement.
- (g) Certificate of Authority. Unless otherwise stipulated by the parties, each party, 10 days prior to appearing at a mediation conference, shall file with the court and serve upon all parties a written notice identifying the person or persons who will be attending appearing at the mediation conference as a party representative or as an insurance carrier representative, and confirming that those persons have the authority required by this rule.

Committee Notes

2020 Amendment. The phrase “audio or audio-video communications technology” is added to the rule to make the rule consistent with amendments to the Rules of Judicial Administration.

2014 Amendment. The amendment adding subdivisions (f) and (g) is intended to make this rule consistent with the November 2011 amendments to Florida Rule of Civil Procedure 1.720.

Rule 9.730 Appointment and Compensation of the Mediator

- (a) Appointment by Agreement. Within 10 days of the court order of referral, the parties may file a stipulation with the court designating a 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 by Court. If the parties cannot agree upon a mediator within 10 days of the order of referral, the appellant shall notify the court immediately and the court shall appoint a certified appellate mediator selected by such procedure as is designated by administrative order. The court shall appoint a certified appellate mediator who is licensed to practice law in any United States jurisdiction, unless otherwise requested upon agreement of the parties.
- (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 appointed by the court cannot serve, a substitute mediator may be agreed upon or appointed 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

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.

Rule 9.740 Completion of Mediation

(a) No Agreement. If the parties do not reach an agreement as a result of mediation, the mediator shall report, within 10 days, the lack of an agreement to the court without comment or recommendation.

(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. Within 10 days thereafter, the mediator shall file a report with the court on a form approved by the court. Signatures may be original, electronic or facsimile and in counterparts.

Florida Family Law Rules of Procedure (rules 12.740-741)

Rule 12.740 Family Mediation

(a) Applicability. This rule governs mediation of family matters and related issues.

(b) Referral. Except as provided by law and this rule, all contested family matters and issues may be referred to mediation. Every effort shall be made to expedite mediation of family issues. Such referral, or written stipulation of the parties, may provide for mediation or arbitration in person, remotely via audio or audio-video communications technology, or a combination thereof.

(c) Limitation on Referral to Mediation. Unless otherwise agreed by the parties, family matters and issues may be referred to a mediator or mediation program which charges a fee only after the court has determined that the parties have the financial ability to pay such a fee. This determination may be based upon the parties' financial affidavits or other financial information available to the court. When the mediator's fee is not established under section 44.108, Florida Statutes, or when there is no written agreement providing for the mediator's compensation, the mediator shall be compensated at an hourly rate set by the presiding judge in the referral order. The presiding judge may also determine the reasonableness of the fees charged by the mediator. When appropriate, the court shall apportion mediation fees between the parties and shall state each party's share in the order of referral. 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.

(d) Appearances. ~~Unless otherwise required by court order or stipulated by the parties, a~~ A party is deemed to appear ~~at a family mediation convened pursuant to this rule~~ if the named party is physically present ~~or, if permitted by court order or written stipulation of the parties, present via audio or audio-video communications technology,~~ at the mediation conference. In the discretion of the mediator and with the agreement 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 otherwise ordered by the court.

(f) Report on Mediation.

(1) If agreement is reached as to any matter or issue, including legal or factual issues 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 unless the parties agree otherwise. By stipulation of the parties, the agreement may be electronically or stenographically recorded and made under oath or affirmed. In such event, an appropriately signed transcript may be filed with the court. Signatures may be original, electronic or facsimile and in counterparts.

(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.

(3) 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.

Commentary

2020 Amendment. The phrase "audio or audio-video communications technology" is added to the rule to make the rule consistent with amendments to the Rules of Judicial Administration.

1995 Adoption. This rule is similar to former Florida Rule of Civil Procedure 1.740. All provisions concerning the compensation of the mediator have been incorporated into this rule so that all mediator compensation provisions are contained in one rule. Additionally, this rule clarifies language regarding the filing of transcripts, the mediator's responsibility for mailing a copy of the agreement to counsel, and counsel's filing of written objections to mediation agreements.

Rule 12.741 Mediation Rules

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

(b) General Procedures.

(1) 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 when mediation is interrupted pending resolution of such a motion.

(2) Sanctions. If a party fails to appear at a duly noticed mediation conference without good cause, or knowingly and willfully violates any confidentiality provision under section 44.405, Florida Statutes, the court upon motion shall impose sanctions, including an award of mediator and attorneys' fees and other costs, against the party.

(3) Adjournments. The mediator may adjourn the mediation conference at any time and may set times for reconvening the adjourned conference. No further notification is required for parties present at the adjourned conference.

(4) Counsel. Counsel shall be permitted to communicate privately with their clients. The mediator shall at all times be in control of the mediation and the procedures to be followed in the mediation.

(5) Communication with Parties. The mediator may meet and consult privately with any party or parties or their counsel.

(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.

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.