

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC21-990

IN RE: AMENDMENTS TO THE
FLORIDA RULES OF CIVIL
PROCEDURE, FLORIDA RULES
OF GENERAL PRACTICE AND
JUDICIAL ADMINISTRATION,
FLORIDA RULES OF CRIMINAL
PROCEDURE, FLORIDA
PROBATE RULES, FLORIDA
TRAFFIC COURT, FLORIDA
SMALL CLAIMS RULES,
FLORIDA RULES OF APPELLATE
PROCEDURE

Comment

Meah Rothman Tell, Esq. files this Comment to the proposed amendment of Florida Rule of Civil Procedure 1.700 and proposes an amendment to Florida Rule of Civil Procedure 1.830, and states:

I. Background

There are two forms of court-connected arbitration provided for in Chapter 44. Court-ordered non-binding arbitration in Section 44.103, Fla. Stat. (2021) and Voluntary binding arbitration in Section 44.104, Fla. Stat. (2021). While a court can order parties to mandatory non-binding arbitration, they cannot order parties

RECEIVED, 09/30/2021 11:57:21 PM, Clerk, Supreme Court

to voluntary binding arbitration. See Kimberly J. Mann, Constitutional Challenges to Court-Ordered Arbitration, 24 Fla. St. U. L. Rev. 1055 (1997). <https://ir.law.fsu.edu/lr/vol24/iss4/11>.

Parties can agree to engage in voluntary binding arbitration pursuant to Section 44.104, Fla. Stat. (2021) by filing a lawsuit if the case has not yet been filed and applying for binding arbitration. If the case has been filed, the parties can agree to submit the dispute to voluntary binding arbitration and ask the court to appoint the arbitrator(s) selected by the parties.

II. Proposed Amendment to Rule 1.830 (a)(2) of the Florida Rules of Civil Procedure.

Rule 1.830 of the Florida Rules of Civil Procedure sets forth how a voluntary binding arbitration shall be conducted. Although the Workgroup did not recommend any amendments to Rule 1.830 (a)(2), it should be amended to read as follows:

Hearing Procedures. Subject to these rules and section 44.104, Florida Statutes, the parties may, by written agreement, before the hearing, establish the hearing procedures for voluntary binding arbitration, including the use of communication technology, as defined in Rule 2.530 of the Florida Rules of General Practice and Court Administration. In the absence of such agreement, the court, or the arbitrator(s) with consent of the parties, shall establish the hearing procedures. It shall not be grounds to appeal a binding arbitration award that the arbitration was conducted using communication technology.

III. Proposed Amendment to Rule 1.700 of the Florida Rules of Civil Procedure.

Currently, the court can order parties to non-binding dispute resolution processes--mediation or non-binding arbitration.

The parties can also stipulate to these non-binding processes. The stipulation should identify how the mediation or court-ordered non-binding arbitration shall be conducted,

either in person, remotely via audio or audio-video communications technology or a combination thereof. However, such stipulation should not be required to be embodied in a court order so that there remains some flexibility during these non-binding dispute resolution processes to change the method and manner of participation in the process, as the need arises, without having to return to court to alter the method and manner of the process. These stipulations should be honored by the neutral—mediator or non-binding arbitrator(s).

Court-orders of referral to mediation and non-binding arbitration should state that the parties must participate in person, remotely via audio or audio-video communications technology, or a combination thereof, as agreed to by the parties, and that in the absence of agreement, the court will determine what method(s) of participation will be required.

IV. Other Comments:

In all other respects I endorse the comment filed by the Executive Council of the Alternative Dispute Resolution Section of the Florida Bar.

Respectfully submitted on this 30th day of September, 2021.

/s/ Meah Rothman Tell, Esq.

Meah Rothman Tell, Esq.

Florida Supreme Court Approved Qualified Arbitration Trainer,
Florida Supreme Court Approved Family and Circuit Mediation
Trainer

7146 S. Devon Drive

Tamarac, Florida 33321

Florida Bar No. 289991

Telephone: (954) 733-5000

Primary e-mail address: meah Tell@gmail.com

Secondary e-mail address: meah Tell@aol.com

Certificate of Service

I certify that on September 30, 2021, the forgoing Request for Oral Argument of The Alternative Dispute Resolution Section of The Florida Bar was served by mail on the Workgroup Chair, Judge Lisa T. Munyon, Ninth Judicial Circuit, Orange County Courthouse, 425 N. Orange Avenue, Orlando, Florida 32801, and on the OSCA Staff

Liaison to the Workgroup, Tina White, 500 S. Duval Street,
Tallahassee, Florida 32399.

Certificate of Compliance

I certify that this comment was prepared in compliance with
the font and word requirements of Florida Rule of Appellate
Procedure 9.045 (b)

/s/ Meah Rothman Tell
Meah Rothman Tell