

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC11-

IN RE: AMENDMENT TO
FLORIDA FAMILY LAW RULES OF PROCEDURE AND FLORIDA RULES
OF CIVIL PROCEDURE AND PROPOSED NEW RULES
GOVERNING PARENTING COORDINATORS
AND ESTABLISHING STANDARDS OF CONDUCT FOR PARENTING
COORDINATORS AND ADR NEUTRALS OTHER THAN MEDIATORS,
ARBITRATORS AND PARENTING COORDINATORS

PETITION OF THE COMMITTEE ON
ALTERNATIVE DISPUTE RESOLUTION RULES AND POLICY
TO
AMEND THE FLORIDA FAMILY LAW RULES OF PROCEDURE AND
FLORIDA RULES OF CIVIL PROCEDURE,
TO
ADOPT NEW RULES GOVERNING PARENTING COORDINATORS
AND TO
ESTABLISH ETHICAL STANDARDS FOR PARENTING
COORDINATORS AND ADR NEUTRALS OTHER THAN MEDIATORS,
ARBITRATORS AND PARENTING COORDINATORS

The Supreme Court Committee on Alternative Dispute Resolution Rules and Policy (ADR Committee), by its undersigned Chair, the Honorable William D. Palmer, respectfully files this petition pursuant to Florida Supreme Court Administrative Order AOSC03-32. In Re: Committee on Alternative Dispute Resolution Rules and Policy (July 8, 2003). (See Appendix M) Its effect preserved through successive reappointments and regular appointment of new members, the 2003 order directs the ADR Committee to monitor court rules governing alternative dispute resolution (ADR) policies and procedures, and to make recommendations as necessary to improve the use of mediation, arbitration and other forms of alternative dispute resolution to supplement the judicial process. The order further provides that the ADR Committee shall perform other assignments related to ADR as directed by the chief justice.

The ADR Committee regularly monitors court rules and standards governing ADR policies and procedures. In this regard a companion Report and attached draft Administrative Order were submitted on August 30, 2011 in response to a Court request and in anticipation of the filing of this petition (Appendix K, ADR Report and Draft administrative order).

Following issuance of the Family and Children in the Court Steering Committee (Steering Committee) “End of Term Report 2008 – 2010” (Report), the Florida Supreme Court specifically directed the ADR Committee, by letter dated September 29, 2010 from Thomas D. Hall, Clerk (Letter) (Appendix L) to consider inconsistencies between rules governing mediation in dependency and other related family law cases. In the Report and in the Letter, the inconsistency specifically cited was between Family Law Rule of Procedure 12.740(f), which provides for a party’s counsel of record who does not attend the mediation to be notified of any settlement reached and given 10 days within which to object to the agreement and Rule of Juvenile Procedure 8.290(o), which is silent regarding notification and objection when an agreement is reached in the absence of a party’s counsel.

The Letter also references the recommendation of the Steering Committee that parenting coordination and mediation issues be referred to the ADR Committee to review, and asks that the ADR Committee seek input from the appropriate Florida Bar committees and make recommendations regarding parenting coordination. These matters are referenced in the ADR Committee’s ADR Report and are addressed in the “Parenting Coordination and Other ADR Neutrals” sections of this petition.

In May of 2006, the ADR Committee directed a subcommittee on ADR “Systems” (Systems Subcommittee) to address and make recommendations on the range of ADR options, in addition to mediation and arbitration, which may be available to parties to promote collaborative approaches to dispute resolution. This work included parenting coordination. The Systems Subcommittee presented final recommendations in 2010 which were adopted by the ADR Committee. Prior to final approval, the recommendations were reviewed by numerous stakeholders including committees of the Florida Bar and ADR professional organizations.

Proposed amendments to court rules and standards of conduct are included in this petition. These proposed amendments are intended to instill and promote public confidence in the use and participation in alternative forms of conflict resolution other than traditional litigation. They constitute an effort to establish a

uniformity and commonality of guidelines and standards applicable to any dispute resolution process selected.

It is the belief of the ADR Committee that the ADR systems proposals developed by the Systems Subcommittee and approved by the ADR Committee which are contained in this petition will improve and increase the use of ADR, increase party self-determination in the selection of an ADR method or methods, provide safeguards for parties selecting ADR neutrals other than mediators and arbitrators and provide greater clarity concerning the variety of ADR methods.

In order to provide a comprehensive petition to the court, the ADR Committee has incorporated the systems proposals along with the recommendations on inconsistencies and parenting coordination.

**INCONSISTENCY BETWEEN FAMILY LAW RULE OF
PROCEDURE 12.740(f) AND
RULE OF JUVENILE PROCEDURE 8.290**

Pursuant to the Letter, the ADR Committee petitions the court to revise Family Law Rule of Procedure 12.740(f) to eliminate the requirement that if counsel of record for any party is not present when an agreement is reached, such counsel shall have 10 days from the service of the copy of the agreement to serve written objection on the mediator, unrepresented parties, and counsel. (Appendix A to this petition is the legislative format of all rule revisions and proposals and Appendix B is the two column format.)

Background and Jurisdiction

The Florida Supreme Court has authority to adopt rules for the practice and procedure in all courts under Article V, Section 2(a) of the Florida Constitution, which would include authority to revise Rule 12.740(f) to eliminate the automatic 10-day provision for review of agreements reached in mediation by a party's absent counsel.

Not only would this revision make Rule 12.740(f) consistent with Florida Rule of Juvenile Procedure 8.290, but Rule 12.740(f) would then be consistent with Florida Rule of Civil Procedure 1.730 governing agreements in civil cases.

The Letter references the discrepancy between the Family Law Rules of Procedure and Rules of Juvenile Procedure regarding the procedure to be followed

when an agreement is reached in mediation in the absence of a party's counsel as an "example" of inconsistencies in the rules that govern mediation in dependency and other family law cases. While "inconsistencies" are referenced in both the Report and the Letter, neither the Systems Subcommittee nor the ADR Committee has been able to identify other inconsistencies which should be addressed.

At the ADR Committee's January 29, 2010 meeting, the members voted unanimously to recommend deleting the language from Family Law Rule of Procedure 12.740(f) providing absent counsel an opportunity to file objections. This recommendation was made to arrive at a set of rules consistent with the concept of a unified family court. The vote was once again reviewed and confirmed by the ADR Committee at their April 1, 2011 and September 9, 2011 meetings.

Lack of rationale and necessity for the 10-day rule provision in the Family Law Rules of Procedure

At its January 29, 2011 meeting, the ADR Committee considered and rejected the idea of recommending the addition of the 10-day rule to the Rules of Juvenile Procedure as a means of providing consistency. The 10-day review provision of rule 12.740(f) automatically delays implementation of a mediated agreement, possibly affecting the pending welfare of minor children in a dissolution or paternity case. The ADR Committee has been advised by those working in the field of dependency that adding such a provision to the dependency rules would cause unwarranted delays in addressing the immediate needs of dependent children. Additionally, the ADR Committee does not perceive a strong rationale for retaining the 10-day rule in the Family Law Rules of Procedure.

Family Law Rule of Procedure 12.740(f) was modeled after a former Rule of Civil Procedure 1.740 which contained a provision allowing counsel to file written objections to mediation agreements. See Commentary to Family Law Rule of Procedure 12.740 entitled "1995 Adoption" (Appendix A-10, Appendix B-12) Rule 1.740 was deleted in 1995, effective January 1, 1996 [663 So. 2d 1047 (Fla. 1995)].

As noted at the January 29, 2010 ADR Committee meeting, under the proposed rule the parties at mediation would still be free to incorporate a provision in the agreement for attorney review. Currently, the rule provision applies whether or not the party whose counsel is not present desires or needs further review by counsel. The ADR Committee believes the current rule provision no longer serves

a beneficial purpose and recommends removing it from the Family Law Rules of Procedure to eliminate the inconsistency with the Rules of Juvenile Procedure. Further, Family Law Rule of Procedure Rule 12.740(d) already requires a positive consent by the parties for family mediation to proceed in the absence of counsel, thus further diluting the rationale for an automatic review and opportunity for objection by an absent counsel. Deletion of the 10-day rule would make Rule 12.740(f) consistent with the core principle of self-determination.

Juvenile Court Rules Committee Consideration and Recommendation

On January 28, 2011, the Florida Bar Juvenile Court Rules Committee (JCRC), in response to the Letter, addressed the inconsistencies concerning “mediation in dependency and other related family law cases” in a letter to the ADR Committee (Appendix G).

The matter had been assigned to and considered by the Dependency Subcommittee of the JCRC. The Subcommittee proposed three amendments to Rule of Juvenile Procedure 8.290 to the Florida Bar Juvenile Rules Committee, one of which was the addition of time for an absent attorney to review any agreement reached.

The full JCRC voted 4 - 7 - 1 not to approve any changes to Rule of Juvenile Procedure 8.290, including rejecting the proposed amendment to allow a party’s absent attorney the opportunity to object to an agreement reached at mediation by the parties.

The JCRC did not find any other inconsistencies between the Rules of Juvenile Procedure and the Family Law Rules of Procedure needing to be addressed.

Proposed Amendment to Florida Family Law Rule of Procedure 12.740(f)

The ADR Committee, with appreciation for the dedication of the Steering Committee and the ADR Committee’s ADR Systems Subcommittee proposes to delete the last three sentences of Rule 12.740(f)(1). The proposed deleted language can be found at Appendix A-8, Appendix B-11.

PARENTING COORDINATION

Background and Jurisdiction

Article V, Section 2(a) of the Florida Constitution provides for the Florida Supreme Court to adopt rules for practice and procedure in all courts which would include the practice and procedures for parenting coordination in the family court.

Even before the receipt of the Letter, the ADR Committee, at its November 18, 2009 meeting, unanimously approved a proposal that the Chair invite the Florida Bar Family Law Rules Committee to form a Joint Parenting Coordination Subcommittee (Joint Subcommittee) to consider existing rules and propose development of new parenting coordination rules, forms, standards and discipline procedures as may be needed. Also included in the proposal to form the Joint Subcommittee was the suggestion to include one or more representatives from the Florida chapter of the Association of Family and Conciliation Courts Parenting Coordination Task Force and a representative from the Florida Coalition against Domestic Violence.

Parenting coordination is considered a dispute resolution process but differs from mediation in that parenting coordinators (PCs) can make recommendations. Parenting coordination has great potential to help children by assisting parents in successfully creating and/or implementing parenting plans.

Section 61.125, Florida Statutes (2010), establishes parenting coordination as a form of dispute resolution. Further, Family Law Rule of Procedure 12.742 and forms for its implementation were authorized by the Florida Supreme Court in In Re: Amendments to the Florida Family Law Rules of Procedure, 27 So.3d 650 (Fla. January 28, 2010). However, a process for qualifying PCs, professional standards of conduct, complete appointment procedures for PCs and uniform training standards were not provided.

Further, no mechanism for discipline exists for PCs. In mediation, Part III of the Rules for Certified and Court-Appointed Mediators provides for discipline of mediators. Part III of the Rules for Court-Appointed Arbitrators provides for “enforcing the rules of conduct for arbitrators pursuant to Chapter 44, Florida Statutes”. Mediation discipline is overseen by the Florida Dispute Resolution Center while arbitrator discipline is overseen by the chief judge of each circuit.

In making the recommendations contained in this petition, the ADR Committee considered a wide range of options for implementation and enforcement of the proposed professional standards of conduct for PCs. In light of the current economic climate, the ADR Committee concluded that the chief judge of each judicial circuit should implement and enforce the proposed standards.

The proposed method, outlined in changes to Rule 12.742 and in the draft administrative order attached to the ADR Report allows for flexibility to accommodate large and small circuits and for variations according to preference. (Appendix K, Draft AO submitted with the ADR Report).

Rules for Qualified and Court-Appointed Parenting Coordinators – Rule 15

Proposed Rule 15, *Rules for Qualified and Court-Appointed Parenting Coordinators*, attached hereto as Appendix A-29 and Appendix B-39, applies to all qualified PCs and to court-appointed PCs. A qualified PC is anyone who is approved by the court to serve pursuant to section 61.125, Florida Statutes (YEAR). The proposed standards are based on the format and principles of the Florida Rules for Certified and Court-Appointed Mediators (Rule 10) and Florida Rules for Court-Appointed Arbitrators (Rule 11).

Part I of Rule 15 addresses ethical standards for PCs and reinforces the concepts of communication, negotiation, and facilitation upon which parenting coordination is based, as well as explaining the role of a parenting coordinator.

The ethical standards embodied in Rule 15 address adherence to role, competence, integrity, impartiality, conflicts of interest, and compliance with statutory and other authority governing parenting coordination, in addition to marketing, adherence to other professional ethical standards by which the PC is professionally bound (if not in conflict with Rule 15), confidentiality, duties in regard to the initial session, fees, records, and responsibility to the courts.

Discipline is covered in Part II of Rule 15 and provides for filing a complaint with the presiding judge, who may remove the PC. The presiding judge may also forward a complaint to the chief judge, or his/her designee, who shall be responsible for enforcement.

At its April 1, 2011 meeting, the ADR Committee made final revisions to the standards for PCs and adopted proposed Rule 15 by a vote of 11-0, with one abstention.

Proposed Amended Family Law Rule of Procedure 12.742, Parenting Coordination

Proposed Amended Family Law Rule of Procedure 12.742, *Parenting Coordination*, is attached hereto as Appendix A-12, Appendix B-16. Issues addressed in the amendments to 12.742 include having each circuit establish a process for qualification of PCs, provision for removal of the PC if the PC becomes disqualified, changes to the section on limitation of the authority of the PC regarding substantive recommendations, a method and forms for communicating with the court (emergencies or other matters requiring a status conference), and a definition of a parenting coordination “session”.

The ADR Committee believes a PC is allowed some discretion in making substantive recommendations. Currently the statute is not clear on this issue and PCs do not know whether to make recommendations to the court or if their authority is only to make recommendations to the parents. The parenting coordination statute currently reads:

61.125 Parenting coordination.--

(1) PURPOSE.--The purpose of parenting coordination is to provide a child-focused alternative dispute resolution process whereby a parenting coordinator assists the parents in creating or implementing a parenting plan by facilitating the resolution of disputes between the parents by providing education, making recommendations, and, with the prior approval of the parents and the court, making limited decisions within the scope of the court's order of referral. (emphasis added)

Family Law Rule of Procedure 12.742(g) allows the PC to have additional decision-making or recommendation authority “with express written consent of both parties.” However, under Family Law Rule of Procedure 12.742(h), a PC is barred from resolving “substantive” disputes. While the definition of a “substantive” dispute is provided, there is no language regarding recommendations. An amendment to Family Law Rule of Procedure 12.742 (h) includes language regarding substantive recommendations. The amendment prohibits substantive recommendations by a PC but contains an exception for emergencies as defined in section 61.125(8), Florida Statutes (2010).

Section (l) of Rule 12.742 entitled “Written Communication with Court” is amended to allow for recognition of the reporting of certain emergencies without

notice to the parties and providing forms to do so (Appendix A-15, Appendix B-22 and Form 12.YYY at Appendix C]. An additional amendment to section (l) of Rule 12.742 is to allow a PC to report to the court that the PC is unable to adequately perform the duties in accordance with the court's direction by requesting a status conference. A new form is provided for making this request (Appendix A-15, Appendix B-22 and Form 12.XXX at Appendix D).

“Parenting coordination session” is defined in Rule 12.742(o), which authorizes the PC to determine who may be present during each parenting coordination session (Appendix A-16 Appendix B-23). The ADR Committee believes this amendment is necessary because the statute includes the term “session” in section 61.125(7), Florida Statutes (2010), regarding confidentiality but fails to define “session”. The lack of definition has generated confusion among PCs. Including a clear definition will provide the parties, their counsel and the court with a better understanding of the extent of confidentiality of parenting coordination communications.

A proposed Committee Note makes suggestions for consideration of referral to other processes prior to parenting coordination. (Appendix A-16, Appendix B-23)

The ADR Committee unanimously approved these proposed Family Law Rules of Procedure amendments with regard to parenting coordination on April 1, 2011. Additionally, the Florida Bar Family Law Rules Committee met on June 24, 2011, and voted unanimously to approve the above proposed rule on parenting coordination and the Rules for Qualified and Court-Appointed Parenting Coordinators.

Proposed New and Amended Parenting Coordination Family Law Rules of Procedure Forms

In order to allow a PC to communicate with the court in specific circumstances without violating the parenting coordination statute, the ADR Committee concluded that changes to existing forms and the addition of new forms and procedures was warranted.

The proposals attached hereto constitute: 1) a slightly revised Family Law Rules of Procedure Form 12.984 (Appendix E) and Form 12.998 (Appendix F) and 2) new Family Law Rules of Procedure Form 12.XXX (Appendix D) and Form 12.YYY (Appendix C).

Family Law Rules of Procedure Form 12.984, *Response by Parenting Coordinator*, and instructions therefor, have been amended to incorporate compliance with proposed Family Law Rules of Procedure 12.710, 12.720, an 12.730, an amended 12.742, and the new Rules for Qualified and Court-Appointed Parenting Coordinators. In addition the “copies to” section near the end of the form is simplified by use of check-off boxes. (Appendix E)

Family Law Rules of Procedure Form 12.998, *Order of Referral to Parenting Coordination*, has sections addressing the appropriateness and explanation of the process, role of the parenting coordinator, domestic violence history and safeguards, and period of appointment. The proposed amendment adds language in section 4.f. providing for requesting a status conference in the event the PC is unable to adequately perform the duties in accordance with the court’s direction. A further revision to this form is proposed to comply with the requirement of proposed Family Law Rule of Procedure 12.710(b) that the order of referral specifies the neutral’s hourly rate of compensation. (Appendix F)

Proposed Family Law Rules of Procedure Form 12.XXX, *Parenting Coordinator Request for Status Conference*, is necessitated by the addition of proposed Family Law Rule of Procedure 12.742(l) adding language to allow written communications with the court. The form contains six options which can trigger a request. The first four are to: 1) request direction from the court, 2) request resolution by the court, 3) report noncompliance by a party, and 4) report the case is no longer appropriate for parenting coordination. Two additional options apply when the PC is no longer qualified, or the PC is unable or unwilling to continue to serve. (Appendix D)

Proposed Family Law Rule of Procedure Form 12.YYY, *Parenting Coordinator Report of an Emergency*, is being proposed to assist the court in enforcing section 61.125(8), Florida Statutes, dealing with reporting emergencies. It has three sections. The first section provides for notice to the court of an emergency where a party has obtained a final order or injunction for protection against domestic violence or has been arrested for domestic violence. The second section provides for notice to the court of an emergency based on a) a reasonable cause to believe that a child will suffer or is suffering abuse, neglect, or abandonment, b) a reasonable cause to believe that a vulnerable adult has been or is being abused, neglected or exploited, and/or c) a wrongful removal of a child from the jurisdiction of the court is expected or underway. The third section provides for a description of the emergency. (Appendix C)

Amended Family Law Rules of Procedure Forms 12.984 and 12.988, as well as new forms 12.XXX and 12.YYY, were adopted by the ADR Committee by a vote of 9 yes votes and 1 no vote at their April 1, 2011 meeting.

The Florida Bar Family Law Rules Committee met on June 24, 2011, and voted unanimously to approve the above proposed forms on parenting coordination and the Rules for Qualified and Court-Appointed Parenting Coordinators.

AN ADR SYSTEMS APPROACH

Background and Jurisdiction

While the use of mediation by litigants in the state court system in Florida far eclipses any other alternative process and it may be the best option for the majority of litigants, other more effective processes may exist depending on the facts and circumstances of a case. In fact, Chapter 44, Florida Statutes (2010), entitled *Mediation Alternatives to Judicial Action*, actually includes other processes such as court ordered non-binding arbitration (44.103), voluntary binding arbitration and voluntary trial resolution (44.104). Additional processes sometimes utilized include the mini-trial, early neutral evaluation, summary jury trial, and other “ad hoc” processes as agreed to by the parties. Standards of professional conduct exist for mediation and arbitration and this petition includes a proposal for standards for PCs; however, there are no procedural rules or standards of professional conduct to govern other potential court-appointed ADR processes.

Making recommendations for a procedural framework and policies for ADR processes that may become established or selected by parties in litigation as a settlement or conflict resolution tool are within the jurisdiction of the ADR Committee, pursuant to Florida Supreme Court Administrative Order AOSC03-32 and within the authority of the Florida Supreme Court to adopt rules for the practice and procedure in all courts under Article V, Section 2(a) of the Florida Constitution.

The ADR Committee believes that the time is ripe for revising the procedural rules to address court referral to all types of ADR methods and to ensure that as other forms of ADR emerge, some minimum standards will exist to govern such ADR conduct. The ADR Committee is proposing a “core” set of standards to address any ADR process that is ordered by the court. These

standards would apply to those processes for which no formal standards of conduct or rules of procedure exist at the time of referral.

To this end, the ADR Committee has developed a draft core set of standards of conduct and procedural rules which would govern ADR processes if utilized by litigants in a court proceeding upon their own initiative or upon order of the court.

In addition to providing rules of procedure and standards of professional conduct for parties utilizing other forms of ADR, these proposals also contemplate circumstances where a judge may elect to refer the parties to ADR generically and allow the parties to satisfy the order to ADR by selecting an ADR method by mutual agreement of the parties. In the event the parties do not agree as to any method of ADR and the ADR neutral who will perform the service, then the parties are required to participate in mediation. The court still retains the ability to refer the parties to a specific form of ADR; however the new rules provide the court with another option which enables the parties to exercise self-determination as to which ADR method or combination of methods would most likely assist them in reaching a settlement.

This ADR systems proposal is not a new concept but rather an elaboration of ideas and recommendations that date back to the development of court mediation rules and procedures in the 1980s. For example, in the Report of the Study Commission on ADR submitted to the Florida Supreme Court in 1986, the Commission wrote: "A precept of the system is that all forms of alternative dispute resolution should not be applied to any given case, in that each type of case will eventually prove to be more susceptible to appropriate disposition by one form of dispute resolution mechanism than by another."

Florida would not be the first state to address other forms of ADR. For example, Kansas Supreme Court Rule 902 defines seven different ADR methods and provides that parties have "free choice of process, program and the individual neutral." Similarly, Minnesota Rule 114 enumerates ten different ADR methods and provides that attorneys are required to meet and confer to agree on an ADR process. If they cannot agree, the court can then order them to a "non-binding process" such as mediation.

Earlier drafts of the ADR Systems proposals have been published in the Florida Bar News, distributed to various Florida Bar Committees including most recently the Florida Bar Family Law Rules Committee, posted on the website of

the Florida Dispute Resolution, and presented at various conferences. All feedback was carefully reviewed by the ADR Committee and incorporated as appropriate.

The proposals incorporating the Systems concept are contained in the Family Law Rules of Procedure (Appendix A-1, Appendix B-1) and the Florida Rules of Civil Procedure (Appendix A-17, Appendix B-25)) as well as in a core set of ethical standards designated proposed Rule 16 (Appendix A-54, Appendix B-67), Rules for Other Court-Appointed Alternative Dispute Resolution Neutrals.

Creating a single set of procedures for all ADR processes in family law as well as in general civil law provides for more uniformity and consistency for both the parties and the court at no additional cost.

Given that multiple forms of ADR are already authorized in both the Family Law Rules of Procedure and the Rules of Civil Procedure, revisions are needed to incorporate the proposals in both sets of procedural rules.

The ADR Committee believes that other methods of ADR are rarely used and are often inappropriate in Chapter 39, Florida Statutes, *Proceedings Related to Children*, cases and, given the unique nature of dependency proceedings, the ADR Committee does not recommend any changes to the dependency mediation rules found in Rules of Juvenile Procedure 8.290.

New Family Law Rules of Procedure: 12.710, 12.720, 12.730, and Amended 12.740

New proposed Family Law Rule of Procedure 12.710, *Referral to ADR Process*, covers referral to an ADR process by the court, which allows the court to refer the parties to ADR generically and allows them to select their own process or combination of processes. The rule additionally allows a judge to refer all or any part of a pending matter to mediation, non-binding arbitration (except in dissolution cases where there are minor children), parenting coordination, another ADR process, or a combination of ADR processes. It goes on to outline a list of possible ADR processes to be selected (the list is not meant to be all inclusive). If no process is selected by the parties, the matter defaults to mediation. (Appendix A-2, Appendix B-2)

New proposed Family Law Rule of Procedure 12.720, *Rules Common to All ADR Processes*, covers provisions relative to the parties stipulating to the use of an ADR process, the timeframe for the process, motions to dispense with ADR,

motions to defer ADR, disqualification of a neutral, and exclusion from ADR of injunctions for protection. As a last item, the new proposed rule indicates that discovery is not suspended during the ADR process unless stipulated by the parties. (Appendix A-4, Appendix B-8)

New proposed Family Law Rule of Procedure 12.730, *Procedures*, includes provisions for the conduct of the ADR process chosen or ordered, including adjournment. (Appendix A-6, Appendix B-9)

Family Law Rule of Procedure 12.740, *Family Mediation*, is amended to delete provisions covered in new proposed rules 12.710 and 12.720 and to include other provisions previously included in Rule 12.741, which has now been eliminated, such as interim or emergency relief, sanctions, role of counsel, caucus, and appointment of the mediator. (Appendix A-7, Appendix B-10)

The new proposed Family Law Rules of Procedure for ADR were adopted by the ADR Committee at the November 18, 2009 meeting by a vote of 12-2.

New Florida Rules of Civil Procedure 1.680, 1.690, 1.700, 1.710 and 1.800

The purpose of the proposed amendments to the Florida Rules of Civil Procedure is to establish uniform guidelines for ADR processes in civil cases other than mediation and non-binding arbitration in order to improve and increase the utilization of ADR methods in a manner that increases party self-determination, while at the same time providing greater protections for parties participating in court-appointed ADR.

New proposed Florida Rule of Civil Procedure 1.680, *Scope and Purpose*, states the purpose of this section of Florida Rules of Civil Procedure are applicable to forms of conflict resolution other than traditional litigation. (Appendix A-17, Appendix B-25)

New proposed Florida Rule of Civil Procedure 1.690, *Referral to ADR Process*, defines ADR in general as well as defining specific forms of ADR. The rule provides for notification in the event the parties are unable to agree on a process or the neutral and provides for appointment of a certified mediator if no process is chosen by the parties. For uniformity and consistency of the rules, as with new proposed Family Law Rule of Procedure 12.710, this proposed rule goes on to outline a list of possible ADR processes to be selected (the list is not meant to be all inclusive). (Appendix A-18, Appendix B-26)

Proposed amended Florida Rule of Civil Procedure 1.700 reflects the inclusion of the new proposed ADR systems concept. Formerly titled *Rules Common to Mediation and Arbitration*, the amended rule is now entitled *Rules Common to All ADR Processes, Including Mediation and Arbitration*. The amended rule contains provisions for the filing of a written stipulation to utilize an ADR process, motions to dispense with or defer ADR, disqualification of a neutral, and exclusions from ADR including extraordinary writs and criminal contempt which previously were contained in Rule of Civil Procedure 1.710. For uniformity and consistency of the rules, as with new proposed Family Law Rule of Procedure 12.710, the new proposed rule indicates that discovery is not suspended during the ADR process unless stipulated by the parties. (Appendix A-20, Appendix B-29)

Proposed amended Florida Rule of Civil Procedure 1.710 reflects the inclusion of the new proposed ADR systems concept. Formerly titled *Mediation Rules*, the proposed amended rule is now entitled *Procedures*. The contents of the original Florida Rule of Civil Procedure 1.710 are now contained in the proposed amended Florida Rule of Civil Procedure 1.700 and the proposed amended Florida Rule of Civil Procedure 1.710 covers the authority of the neutral, attendance and conduct of the ADR process. (Appendix A-22, Appendix B-32)

Florida Rules of Civil Procedure 1.720-1.750, all connected to mediation, remain unchanged and control over the newly proposed Florida Rules of Civil Procedure 1.680-1.690.

Proposed amended Florida Rule of Civil Procedure 1.800 reflects the inclusion of the new proposed ADR systems concept. Formerly titled *Exclusions from Arbitration*, the amended rule is now entitled *Applicability*. The contents of the original Florida Rule of Civil Procedure 1.800 are now part of the proposed amended Florida Rule of Civil Procedure 1.700(f). The amendments change Florida Rule of Civil Procedure 1.800 to specify that the rules for court-connected arbitration apply regardless of whether arbitration is court-ordered or selected by the parties and control over new proposed Florida Rules of Civil Procedure 1.680 and 1.690 (Appendix A-27, Appendix B-38)

Florida Rules of Civil Procedure 1.810-1.830, all connected to arbitration, remain unchanged and control over the newly proposed Florida Rules of Civil Procedure 1.680-1.690.

The new proposed Florida Civil Rules of Procedure for ADR were adopted by the ADR Committee at the November 18, 2009 meeting with 12 yes votes and 2 no votes.

Rule 16 – Rules for Other Court-Appointed Alternative Dispute Resolution Neutrals

The purpose of proposed new Rule 16, entitled *Florida Rules for Other Court-Appointed Alternative Dispute Resolution Neutrals*, is to provide a set of minimum standards to which all individuals will be held accountable when performing neutral services for which no other formal ethical standards exist. These rules would not apply to mediators, arbitrators and PCs which have, or in the case of PCs, where it is proposed that they have, their own set of ethical standards.

Having generic standards of conduct for a range of ADR neutrals is not a new concept. For example, Minnesota Rule 114 provides for a set of core standards that apply to neutrals providing a range of ADR services in order to ensure there is “broad public confidence in the integrity and fairness of the process.”

Part I of Rule 16, entitled “*Standards*,” emphasizes the importance of all neutrals being held to and embracing ethical standards of conduct, which will encourage public use, understanding, satisfaction with, and confidence in new ADR processes as they emerge. The proposed rule both guides the neutral and protects the consumer. Neutrals practicing an established form of ADR (such as mediation or arbitration) are held to the more specific standards. The proposed new rule tracks the standards for certified and court-appointed mediators where possible and encompasses a variety of core subjects: the neutral’s role, misrepresentation, impartiality, conflicts of interest, demeanor, privacy, advising a party to seek legal counsel or tax advice if the party does not understand or appreciate legal or tax consequences of the outcome, fees, and conduct of the ADR process (including orientation, adjournment, termination, and scheduling). It covers compliance with applicable statutes, court rules and orders, marketing, integrity, impartiality, skill and experience. (Appendix A-54, Appendix B-67)

Part II of Rule 16, *Discipline*, places responsibility for enforcement of these standards on the court appointing the ADR neutral. This method follows the court supervision of other quasi-judicial and non-judicial officers such as court reporters, court interpreters, some expert witnesses, public guardians, civil traffic hearing

officers, child support hearing officers, child custody evaluators and court-appointed magistrates. (Appendix A-74, Appendix B-89)

The new proposed Rule 16 – Rules for Other Court-Appointed Alternative Dispute Resolution Neutrals was adopted by the ADR Committee at the April 1, 2011 meeting with 8 yes votes and 2 no votes.

Posting of Rules, Comments, and Response to Comments

Input from the Florida Bar was received through its Committees in letters to the ADR Committee. The Florida Bar Juvenile Court Rules Committee response is attached as Appendix G, the Florida Bar Family Law Rules Committee response is attached as Appendix H, and the response of the Florida Bar Civil Rules Committee is attached as Appendix I. In addition, the proposed rules and rule form proposals were posted on the DRC website from May 20, 2011 to June 8, 2011. One personal comment was received as a result of the posting, which is attached as Appendix J.

WHEREFORE, the Committee on Alternative Dispute Resolution Rules and Policy respectfully requests this court consider and adopt the proposed new and amended Florida Family Law Rules of Procedure relating to deletion of the 10-day review provision, parenting coordination, and other ADR court-appointed neutrals; new and amended Florida Rules of Civil Procedure relating to other ADR court-appointed neutrals; new and amended Family Law Rules of Procedure Forms; and new standards of conduct for parenting coordinators and other ADR neutrals presented respectively as Rule 15 and Rule 16.

Respectfully submitted this ____ day of _____ 2011.

Judge William D. Palmer
Florida Bar No. 220361
Chair of the Committee on Alternative Dispute
Resolution Rules and Policy
Fifth District Court of Appeal
300 South Beach Street
Daytona Beach, Florida 32114
Telephone: 386-947-1502

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by United States mail this ____ day of September, 2011, to Steven Patrick Combs, Chair of The Florida Family Rules of Procedure Committee, Combs Greene McLester, 3217 Atlantic Blvd., Jacksonville, FL 32307-8901; William W. Booth, Chair of the Florida Bar Juvenile Court Rules Committee, Legal Aid Society of Palm Beach County, 423 Fern St. Ste 200, West Palm Beach, FL 33401-5839; Donald E. Christopher, Chair of the Florida Rules of Civil Procedure Committee, 390 North Orange Avenue, Suite 1875, Post Office Box 1549, Orlando, Florida 32802; Dana Dowling, Staff Liaison, Families and Children in the Court Steering Committee, 500 So. Duval Street, Tallahassee, FL 32399; John F. Harkness, Jr., Executive Director, The Florida Bar, 651 East Jefferson Street, Tallahassee, FL 32399-2300; and Elena Rodriguez, Commenter, 10420 S.W. 140 Road, Miami, FL 33176.

CERTIFICATE OF TYPEFACE COMPLIANCE

I further certify this petition has been prepared in MS Word using Times New Roman 14-point font, which complies with the font requirements set forth in Florida Rule of Appellate Procedure 9.210(a)(2).

Judge William D. Palmer
Florida Bar No. 220361