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An Agricultural Law Research Project

**States' Alternative Dispute Resolution Statutes**  
**State of Florida**

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## States' Alternative Dispute Resolution Statutes

### STATE OF FLORIDA

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#### **Arbitration Code**

Title XXXIX, Chapter 682

*Current through the 2008 Second Regular Session*

#### 682.01. Florida arbitration code

Sections 682.01-682.22 may be cited as the "Florida Arbitration Code."

#### 682.02. Arbitration agreements made valid, irrevocable, and enforceable; scope

Two or more parties may agree in writing to submit to arbitration any controversy existing between them at the time of the agreement, or they may include in a written contract a provision for the settlement by arbitration of any controversy thereafter arising between them relating to such contract or the failure or refusal to perform the whole or any part thereof. This section also applies to written interlocal agreements under ss. 163.01 and 373.1962 in which two or more parties agree to submit to arbitration any controversy between them concerning water use permit applications and other matters, regardless of whether or not the water management district with jurisdiction over the subject application is a party to the interlocal agreement or a participant in the arbitration. Such agreement or provision shall be valid, enforceable, and irrevocable without regard to the justiciable character of the controversy; provided that this act shall not apply to any such agreement or provision to arbitrate in

which it is stipulated that this law shall not apply or to any arbitration or award thereunder.

#### 682.03. Proceedings to compel and to stay arbitration

(1) A party to an agreement or provision for arbitration subject to this law claiming the neglect or refusal of another party thereto to comply therewith may make application to the court for an order directing the parties to proceed with arbitration in accordance with the terms thereof. If the court is satisfied that no substantial issue exists as to the making of the agreement or provision, it shall grant the application. If the court shall find that a substantial issue is raised as to the making of the agreement or provision, it shall summarily hear and determine the issue and, according to its determination, shall grant or deny the application.

(2) If an issue referable to arbitration under an agreement or provision for arbitration subject to this law becomes involved in an action or proceeding pending in a court having jurisdiction to hear an application under subsection (1), such application shall be made in said court. Otherwise and subject to s. 682.19, such application may be made in any court of competent jurisdiction.

(3) Any action or proceeding involving an issue subject to arbitration under this law shall be stayed if an order for arbitration or an application therefor has been made under this section or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

(4) On application the court may stay an arbitration proceeding commenced or about to be commenced, if it shall find that no agreement or provision for arbitration subject to this law exists between the party making the application and the party causing the arbitration to be had. The court shall summarily hear and determine the issue of the making of the agreement or provision and, according to its determination, shall grant or deny the application.

(5) An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated have not been shown.

#### 682.04. Appointment of arbitrators by court

If an agreement or provision for arbitration subject to this law provides a method for the appointment of arbitrators or an umpire, this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or if an arbitrator or umpire who has been appointed fails to act and his or her successor has not been duly appointed, the court, on application of a party to such agreement or provision shall appoint one or more arbitrators or an umpire. An arbitrator or umpire so appointed shall have like powers as if named or provided for in the agreement or provision.

#### 682.05. Majority action by arbitrators

The powers of the arbitrators may be exercised by a majority of their number unless otherwise provided in the agreement or provision for arbitration.

#### 682.06. Hearing

Unless otherwise provided by the agreement or provision for arbitration:

(1)(a) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered or certified mail not less than 5 days before the hearing. Appearance at the hearing waives a party's right to such notice. The arbitrators may adjourn their hearing from time to time upon their own motion and shall do so upon the request of any party to the arbitration for good cause shown, provided that no adjournment or postponement of their hearing shall extend beyond the date fixed in the agreement or provision for making the award unless the parties consent to a later date. An umpire authorized to hear and decide the cause upon failure of the arbitrators to agree upon an award shall, in the course of his or her jurisdiction, have like powers and be subject to like limitations thereon.

(b) The arbitrators, or umpire in the course of his or her jurisdiction, may hear and decide the controversy upon the evidence produced notwithstanding the failure or refusal of a party duly notified of the time and place of the hearing to appear. The court on application may direct the arbitrators, or the umpire in the course of his or her jurisdiction, to proceed promptly with the hearing and making of the award.

(2) The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

(3) The hearing shall be conducted by all of the arbitrators but a majority may determine any question and render a final award. An umpire authorized to hear and decide the cause upon the failure of the arbitrators to agree upon an award shall sit with the arbitrators throughout their hearing but shall not be counted as a part of their quorum or in the making of their award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator, arbitrators or umpire appointed to act as neutrals may continue with the hearing and determination of the controversy.

#### 682.07. Representation by attorney

A party has the right to be represented by an attorney at any arbitration proceeding or hearing under this law. A waiver thereof prior to the proceeding or hearing is ineffective.

#### 68208. Witnesses, subpoenas, depositions

(1) Arbitrators, or an umpire authorized to hear and decide the cause upon failure of the arbitrators to agree upon an award, in the course of her or his jurisdiction, may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the court by a party to the arbitration or the arbitrators, or the umpire, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(2) On application of a party to the arbitration and for use as evidence, the arbitrators, or the umpire in the course of her or his jurisdiction, may permit a deposition to be taken, in the manner and upon the terms designated by them or her or him of a witness who cannot be subpoenaed or is unable to attend the hearing.

(3) All provisions of law compelling a person under subpoena to testify are applicable.

(4) Fees for attendance as a witness shall be the same as for a witness in the circuit court.

#### 682.09. Award

(1) The award shall be in writing and shall be signed by the arbitrators joining in the award or by the umpire in the course of his or her jurisdiction. They or he or she shall deliver a copy to each party to the arbitration either personally or by registered or certified mail, or as provided in the agreement or provision.

(2) An award shall be made within the time fixed therefor by the agreement or provision for arbitration or, if not so fixed, within such time as the court may order on application of a party to the arbitration. The parties may, by written agreement, extend the time either before or after the expiration thereof. Any objection that an award was not made within the time required is waived unless the objecting party notifies the arbitrators or umpire in writing of his or her objection prior to the delivery of the award to him or her.

#### 682.10. Change of award by arbitrators or umpire

On application of a party to the arbitration, or if an application to the court is pending under s. 682.12, s. 682.13 or s. 682.14, on submission to the arbitrators, or to the umpire in the case of an umpire's award, by the court under such conditions as the court may order, the arbitrators or umpire may modify or correct the award upon the grounds stated in s. 682.14(1)(a) and (c) or for the purpose of clarifying the award. The application shall be made within 20 days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the other party to the arbitration, stating that he or she must serve his or her objections thereto, if any, within 10 days from the notice. The award so modified or corrected is subject to the provisions of ss. 682.12-682.14.

#### 682.11. Fees and expenses of arbitration

Unless otherwise provided in the agreement or provision for arbitration, the arbitrators' and umpire's expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award.

#### 682.12. Confirmation of an award

Upon application of a party to the arbitration, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in ss. 682.13 and 682.14.

#### 682.13. Vacating an award

(1) Upon application of a party, the court shall vacate an award when:

(a) The award was procured by corruption, fraud or other undue means.

(b) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or umpire or misconduct prejudicing the rights of any party.

(c) The arbitrators or the umpire in the course of her or his jurisdiction exceeded their powers.

(d) The arbitrators or the umpire in the course of her or his jurisdiction refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of s. 682.06, as to prejudice substantially the rights of a party.

(e) There was no agreement or provision for arbitration subject to this law, unless the matter was determined in proceedings under s. 682.03 and unless the party participated in the arbitration hearing without raising the objection.

But the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(2) An application under this section shall be made within 90 days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within 90 days after such grounds are known or should have been known.

(3) In vacating the award on grounds other than those stated in paragraph (1)(e), the court may order a rehearing before new arbitrators chosen as provided in the agreement or provision for arbitration or by the court in accordance with s. 682.04, or, if the award is vacated on grounds set forth in paragraphs (1)(c) and (d), the court may order a rehearing before the arbitrators or umpire who made the award or their successors appointed in accordance with s. 682.04. The time within which the agreement or provision for arbitration requires the award to be made is applicable to the rehearing and commences from the date of the order therefor.

(4) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

#### 682.14. Modification or correction of award

(1) Upon application made within 90 days after delivery of a copy of the award to the applicant, the court shall modify or correct the award when:

(a) There is an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award.

(b) The arbitrators or umpire have awarded upon a matter not submitted to them or him or her and the award may be corrected without affecting the merits of the decision upon the issues submitted.

(c) The award is imperfect as a matter of form, not affecting the merits of the controversy.

(2) If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award

as made.

(3) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

#### 682.15. Judgment or decree on award

Upon the granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the court.

#### 682.16. Judgment roll, docketing

(1) On entry of judgment or decree, the clerk shall prepare the judgment roll consisting, to the extent filed, of the following:

(a) The agreement or provision for arbitration and each written extension of the time within which to make the award;

(b) The award;

(c) A copy of the order confirming, modifying or correcting the award; and

(d) A copy of the judgment or decree.

(2) The judgment or decree may be docketed as if rendered in a civil action.

#### 682.17. Application to court

Except as otherwise provided, an application to the court under this law shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.

#### 682.18. Court; definition; jurisdiction

(1) The term “court” means any court of competent jurisdiction of this state. The making of an agreement or provision for arbitration subject to this law and providing for arbitration in this state shall, whether made within or outside this state, confer jurisdiction on the court to enforce the agreement or provision under this law, to enter judgment on an award duly rendered in an arbitration thereunder and to vacate, modify or correct an award rendered thereunder for such cause and in the manner provided in this law.

(2) Any judgment entered upon an award by a court of competent jurisdiction of any state, territory, the Commonwealth of Puerto Rico or foreign country shall be enforceable by application as provided in s. 682.17 and regardless of the time when said award may have been made.

#### 682.19. Venue

Any application under this law may be made to the court of the county in which the other party to the agreement or provision for arbitration resides or has a place of business, or, if she or he has no residence or place of business in this state, then to the court of any county. All applications under this law subsequent to an initial application shall be made to the court hearing the initial application unless it shall order otherwise.

#### 682.20. Appeals

(1) An appeal may be taken from:

- (a) An order denying an application to compel arbitration made under s. 682.03.
- (b) An order granting an application to stay arbitration made under s. 682.03(2)-(4).
- (c) An order confirming or denying confirmation of an award.
- (d) An order modifying or correcting an award.
- (e) An order vacating an award without directing a rehearing.
- (f) A judgment or decree entered pursuant to the provisions of this law.

(2) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

#### 682.21. Law not retroactive

This law applies only to agreements and provisions for arbitration made subsequent to the taking effect of this law.

#### 682.22. Severability

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this chapter. In any action or proceeding in any state or territory of the United States, the Commonwealth of Puerto Rico, or any foreign country, this chapter and any agreement or provision to arbitrate made thereunder shall be classified as substantive within the meaning of that term in the conflict of laws; provided, however, that such substantive classification shall never be intended to derogate the public policy of such other jurisdiction.

**Part I. Title, Policy, Scope, and Definitions**

684.01. Short title

This chapter shall be known and may be cited as the “Florida International Arbitration Act.”

684.02. Policy

(1) It is the policy of the Legislature to encourage the use of arbitration to resolve disputes arising out of international relationships and to assure access to the courts of this state for legal proceedings ancillary to, or otherwise in aid of, such arbitration.

(2) Any person may enter into a written undertaking to arbitrate any dispute then existing or thereafter arising between that person and another. If the dispute is within the scope of this chapter, the undertaking shall be enforced by the courts of this state in accordance with s. 684.22 without regard to the justiciable character of the dispute. In addition, if the undertaking is governed by the law of this state, it shall be valid and enforceable in accordance with ordinary principles of contract law.

684.03. Scope of this chapter

(1) This chapter shall only apply to the arbitration of disputes between:

(a) Two or more persons at least one of whom is a nonresident of the United States; or

(b) Two or more persons all of whom are residents of the United States if the dispute:

1. Involves property located outside the United States;

2. Relates to a contract or other agreement which envisages performance or enforcement in whole or in part outside the United States;

3. Involves an investment outside the United States or the ownership, management, or operation of a business entity through which such an investment is effected, or any agreement pertaining to any interest in such an entity; or

4. Bears some other relation to one or more foreign countries.

(2) Notwithstanding the provisions of subsection (1), this chapter shall not apply to the arbitration of:

(a) Any dispute pertaining to the ownership, use, development, or possession of, or a lien of record upon, real property located in this state, unless the parties in writing expressly submit the arbitration of that dispute to this chapter; or

(b) Any dispute involving domestic relations or of a political nature between two or more governments.

(3) If, in any arbitration within the scope of this chapter, reference must, under applicable conflict of laws principles, be made to the arbitration law of this state, such reference shall be to this chapter.

(4) This chapter shall not apply to conciliation or mediation proceedings except as provided in s. 684.10.

#### 684.04. Definitions

As used in this chapter:

(1) The term “person” shall have the meaning set forth in s. 1.01(3) and shall include a government or any agency, instrumentality, or subdivision thereof.

(2) The term “resident of the United States” means:

(a) A natural person who maintains his or her sole residence within a state, possession, or territory of the United States or within the District of Columbia; or

(b) Any other person organized or incorporated under the laws of the United States or any state, possession, or territory thereof or of the District of Columbia.

(3) The term “nonresident of the United States” means any person not a resident of the United States as defined in subsection (2).

(4) Any reference to a “written undertaking to arbitrate” shall be to that writing by which a person undertakes to submit a dispute to arbitration, without regard to whether that undertaking is sufficient to sustain a valid and enforceable contract or is subject to defenses. A written undertaking to arbitrate may be part of a contract, or may be a separate writing, and may be contained in correspondence, telegrams, telexes, or any other form of written communication.

### **Part II. Conduct of Arbitrations**

#### 684.05. Scope of part

This part shall apply to any arbitration within the scope of this chapter, without regard to whether the place of arbitration is within or without this state, if:

(1) The written undertaking to arbitrate expressly provides, or the parties otherwise agree, that the law of this state shall apply;

(2) In the absence of a choice of law provision applicable to the written undertaking to arbitrate, that undertaking forms part of a contract the interpretation of which is to be governed by the law of this state; or

(3) In any other case, the arbitral tribunal decides under applicable conflict of laws principles that the arbitration shall be conducted in accordance with the law of this state.

#### 684.06. Conduct of the arbitration

(1) Except as provided in this chapter or in the written undertaking to arbitrate, the arbitral tribunal shall conduct the arbitration as it deems appropriate, including determination of the language to be used.

(2) The arbitral tribunal shall have the power to rule on all challenges to its jurisdiction. This shall include, without limitation, challenges based on the claim that the written undertaking to arbitrate does not exist or does not give rise to a valid and enforceable agreement, challenges asserting that the dispute is not within the scope of the questions referable to arbitration or is otherwise nonarbitrable, and challenges to the composition of, or method used in forming, the tribunal.

#### 684.07. Freedom of parties to fix rules for arbitration

(1) The parties may at any time agree in writing to conduct the arbitration in accordance with such rules as they may select, including any system of rules incorporated by reference in the written undertaking to arbitrate. In determining those rules, the parties may elect to exclude from the arbitration one or more provisions of this part. The provisions of this part shall not apply except to the extent consistent with and subject to the rules adopted by the parties. As used in this part, the term “written undertaking to arbitrate” includes any system of rules selected by the parties.

(2) If any provision of this part or of the written undertaking to arbitrate is not complied with, any party who nevertheless proceeds with the arbitration without stating her or his objection without undue delay or, if a time limit is provided for stating such objection, within such time period may be deemed to have waived or be estopped from any right to object.

#### 684.08. Notice commencing arbitration; answer and notices during arbitration

(1) A party desiring to arbitrate a dispute pursuant to a written undertaking to arbitrate shall give or cause to be given to all parties to that undertaking written notice of the commencement of the arbitration. The notice shall set forth the nature of the dispute, the names and addresses of the parties, a reference to the written undertaking to arbitrate, a demand that the dispute be referred to arbitration under that undertaking, and a statement of the relief sought, including the amount claimed, if any. The notice may also include a proposal for the method of appointing the arbitral tribunal, if that method has not already been agreed upon, or may give notice of the appointment of an arbitrator.

(2) The notice commencing arbitration shall be served upon the other parties to the written undertaking to arbitrate in the manner provided in that undertaking or, in the absence of such a provision, in a manner reasonably designed to give other parties actual notice of the proposed proceedings.

(3) If a party to a written undertaking to arbitrate dies or if a committee of the person or property of a party to such an undertaking is appointed, an arbitration under that undertaking may be commenced or continued by, or upon notice to, the personal representative or administrator of the deceased party; the committee of the person or property of that party; or, where the proceedings relate to real property, any distributee or devisee who has succeeded to the deceased party's interest in the property.

(4) Following its appointment, the arbitral tribunal shall fix a time within which any party served with a notice commencing arbitration must file with the tribunal such written answer, counterclaim, or cross-claim as that party determines appropriate. Such answer, counterclaim, or cross-claim shall also be served upon the other parties to the arbitration in the manner provided in the written undertaking to arbitrate or, in the absence thereof, in the manner fixed by the arbitral tribunal. Failure to file an answer shall constitute a general denial of the claim set forth in the notice commencing the arbitration.

(5) If in the course of an arbitration it becomes necessary or advisable for any party to give notice to or serve documents upon the arbitral tribunal or one or more parties to the arbitration, it shall do so in the manner provided in the written undertaking to arbitrate or, in the absence thereof, in the manner fixed by the tribunal.

#### 684.09. Appointment of the arbitral tribunal

If the parties in the written undertaking to arbitrate or otherwise agree upon a method for appointing the arbitral tribunal or any member thereof or successor thereto, that method shall be followed. If, notwithstanding that undertaking, the parties agree upon named arbitrators, the arbitrators so named shall constitute the tribunal. If the parties shall fail to agree upon such a method or if the method selected shall fail and the parties shall not have otherwise named the tribunal, such appointment may be made as provided in s. 684.23(1). Unless the parties otherwise agree, the tribunal shall consist of a single arbitrator.

#### 684.10. Mediation, conciliation, and settlement

(1) If during the arbitral proceedings a party claims in writing that one or more of the parties has not complied with an agreement to submit a dispute to mediation or conciliation, the arbitral tribunal shall determine the validity and timeliness of that claim and, upon finding it valid and timely, shall hold the arbitral proceedings in abeyance pending submission of the dispute to mediation or conciliation as agreed. Thereafter, the tribunal shall proceed to arbitrate the dispute when satisfied that the attempt at mediation or conciliation has failed.

(2) If before a final award is issued the parties agree to settle their dispute, the arbitral tribunal shall either issue an order terminating the arbitral proceeding or, if requested by the parties and accepted by the tribunal, record the agreed settlement in the form of a final award.

#### 684.11. Majority action by the arbitral tribunal

If the arbitral tribunal consists of more than one arbitrator, its powers shall be exercised by a majority of its members, except that the tribunal may authorize the presiding arbitrator to decide matters of procedure subject to review by the full tribunal.

#### 684.12. Consolidation of arbitrations

(1) If two or more disputes have common questions of law or fact or arise out of a single transaction or enterprise and if at least one of those disputes is to be arbitrated under this chapter, the disputes may be consolidated and determined by one arbitral tribunal if consolidation is not prohibited by the arbitral law or the rules otherwise applicable to the separate disputes and:

- (a) All affected parties agree to the consolidation; or
  - (b) All of the disputes are to be submitted to the same tribunal, and the tribunal determines that consolidation will serve the interests of justice and the expeditious resolution of the disputes.
- (2) The consolidated proceedings shall be conducted under such rules as the parties agree upon or, in the absence of agreement, as determined by the arbitral tribunal.

684.13. Hearings; place of arbitration

(1) At the request of a party or upon its own initiative, the arbitral tribunal shall conduct one or more hearings for the purpose of examining witnesses, inspecting documents or other evidence, or entertaining oral arguments; however, if the parties shall request more than one hearing, the determination as to whether any hearings shall be held subsequent to the first hearing shall be made by the tribunal. A hearing may be held at any place within or without this state that the tribunal determines appropriate, whether or not that place is the place of arbitration. In the absence of a request for a hearing, the tribunal may proceed on the basis of documents and other materials. If a hearing is to be conducted, the tribunal shall cause notice to be given to each party not less than 14 days before the hearing, unless notice proves impossible after efforts reasonably designed to give actual notice. Appearance at a hearing without timely objection shall constitute a waiver of the notice requirement.

(2) Prior to a date certain established by the arbitral tribunal, any party may amend a claim, answer, counterclaim, or cross-claim previously filed by it or may assert additional claims, counterclaims, or cross-claims. After that date, all such additions and amendments shall be at the discretion of the tribunal.

(3) The place of arbitration, whether within or without this state, shall be determined by the parties or, in the absence of such determination, by the arbitral tribunal having regard to the circumstances of the arbitration. Selection of the place of arbitration shall not in itself constitute selection of the procedural or substantive law of that place as the law governing the arbitration.

(4) The arbitral tribunal may hold meetings at any place, whether or not it is the place of arbitration, and may use any means of communication it deems appropriate.

(5) The arbitral tribunal may adjourn its proceedings from time to time upon its own initiative and shall do so upon the request of a party for good cause shown; however, no adjournment shall extend the proceedings beyond the date fixed by the parties for issuance of a final award unless the parties extend that date.

(6) The arbitral tribunal may dismiss any claim, counterclaim, or cross-claim which the moving party fails to prosecute with reasonable diligence as determined by the tribunal. If a person against whom a claim, counterclaim, or cross-claim is filed fails to appear or proceed with a defense against that claim without good cause shown, the tribunal shall decide the claim, counterclaim, or cross-claim on the basis of the evidence before it. No award shall issue based solely upon the default of a party, and the failure of any party to appear, proceed, or defend shall not in itself be treated as an admission.

#### 684.14. Representation by counsel

A party to an arbitration shall have the right to be represented by counsel in any arbitral proceeding. A waiver of that right prior to any proceeding is ineffective.

#### 684.15. Evidence; witnesses; subpoenas; depositions

(1) The arbitral tribunal shall determine the relevance and materiality of the evidence and need not follow formal rules of evidence. The tribunal may take into account its own experience and any customs, usages of trade, or other facts and circumstances which it deems relevant. The tribunal may utilize any lawful method it deems appropriate to obtain evidence additional to that produced by the parties, and the parties shall comply with any request of the tribunal for additional evidence.

(2) The arbitral tribunal may issue subpoenas or other demands for the attendance of witnesses or for the production of books, records, documents, and other evidence, may administer oaths, may order depositions to be taken or other discovery obtained, without regard to the place where the witness or other evidence is located, and may appoint one or more experts to report to it.

(3) The arbitral tribunal may fix such fees for the attendance of witnesses as it deems appropriate.

(4) In exercising the powers conferred upon it by this section, the arbitral tribunal may apply for assistance from any court, tribunal, or governmental authority in any jurisdiction.

#### 684.16. Interim relief

(1) Upon application by a party and after all other parties have been notified and given an opportunity to comment, unless notice proves impossible after efforts reasonably designed to give actual notice, the arbitral tribunal may grant such interim relief as it considers appropriate and, in so doing, may require the applicant to post bond or give other security. The power herein conferred upon the tribunal is without prejudice to the right of a party under applicable law to request interim relief directly from any court, tribunal, or other governmental authority, within or without this state, and to do so without prior authorization of the arbitral tribunal. Unless otherwise provided in the written undertaking to arbitrate, such a request shall not be deemed incompatible with, nor a waiver of, that undertaking.

(2) In lieu of an order granting interim relief, or in aid of any order granted, the arbitral tribunal may itself apply or may authorize a party to apply to any court, tribunal, or other governmental authority within or without this state for such assistance in securing the objectives intended by the order or request for interim relief as the arbitral tribunal determines appropriate.

(3) If the arbitral tribunal determines that participation by one or more parties in its review of an application for interim relief might jeopardize the effectiveness of the relief requested, it shall, notwithstanding the requirements of subsection (1), make its decision without notice to, and in the absence of, such parties and shall also, without notice to such parties, take any action authorized by subsection (2); provided that immediately following the issuance of an order for interim relief by the arbitral tribunal or by a court, tribunal, or other governmental authority, whichever is the last to occur, the arbitral tribunal shall extend to all parties not notified of the application for interim relief adequate opportunity to seek termination or modification of any relief granted.

(4) The arbitral tribunal may at any time modify or terminate any interim relief granted by it.

The arbitral tribunal shall decide the merits of the dispute before it according to the law or other decisional principles provided for in the written undertaking to arbitrate, including acting *ex aequo et bono* or as *amiables compositeurs*. In the absence of such stipulation, the tribunal shall decide the merits of the dispute according to the law, including equitable principles, which it determines should control. In making that determination, the tribunal shall be free to employ the conflict of laws principles which it deems most appropriate to the circumstances of the arbitration.

#### 684.18. Interest

The arbitral tribunal may award interest as agreed to in writing by the parties or, in the absence of such agreement, as the tribunal deems appropriate.

#### 684.19. Awards

(1) The arbitral tribunal shall issue its final award within such time as is specified by the parties in writing or, in the absence of such specification, within such time as the tribunal determines appropriate. In addition to a final award, a tribunal may issue interim, interlocutory, or partial awards. Each award shall be in writing, shall state the date and place of issuance, and shall be signed prior to issuance by each member of the tribunal unless, in the case of a tribunal consisting of more than one member, the award is signed by a majority of the members and an explanation for each missing signature is given. Members' signatures need not be affixed at the place of arbitration.

(2) The arbitral tribunal shall deliver, either personally or by registered or certified mail, a signed counterpart of the award to each party to the arbitration, unless such delivery proves impossible after efforts reasonably designed to assure actual delivery.

(3) A written statement of the reasons for an award shall be issued only if all parties agree to the issuance thereof or the tribunal determines that a failure to do so could prejudice recognition or enforcement of the award. An award may be made public by the tribunal or by a party only if:

(a) All parties to the arbitration consent thereto in writing;

(b) Disclosure is required by law; or

(c) Disclosure is necessary in connection with any judicial or other official proceeding concerning the award.

(4) The arbitral tribunal may award reasonable fees and expenses actually incurred, including, without limitation, fees and expenses of legal counsel, to any party to the arbitration and shall allocate the costs of the arbitration among the parties as it determines appropriate.

#### 684.20. Change of award

Upon application by a party filed within 30 days of the issuance of an award, the arbitral tribunal may

vacate, clarify, correct, or amend an award. A copy of the application shall be delivered to all parties to the arbitration personally or by registered or certified mail, unless such delivery proves impossible after efforts reasonably designed to assure actual delivery. Thereafter, the parties shall be given adequate opportunity to respond in writing. In reaching its decision, the tribunal may hold further hearings, take additional evidence, and accept written submissions from the parties.

### **Part III. Court Proceedings in Connection with Arbitration**

#### 684.21. Scope of this part

This part shall apply to any arbitration within the scope of this chapter, whether or not the arbitration is subject to the provisions of part II of this chapter.

#### 684.22. Court proceedings to compel arbitration and to stay certain court proceedings

(1) A person may apply to a circuit court of this state for an order compelling arbitration if that person claims that another party to a dispute has entered into a written undertaking to arbitrate that dispute and after notice has refused or otherwise failed to arbitrate in accordance with the undertaking. If the court, sitting without a jury, finds that the party refusing or otherwise failing to arbitrate has, in fact, given the undertaking claimed, the order compelling arbitration shall issue without regard to whether the place of arbitration is within or without this state or the arbitration is subject to part II of this chapter, unless the court finds:

(a) That there was fraud in the inducement of the written undertaking to arbitrate;

(b) That submission of the dispute to arbitration would be contrary to the public policy of this state or of the United States; or

(c) That an arbitral tribunal impaneled in accordance with the written undertaking to arbitrate has previously determined that the dispute is not arbitrable or that the undertaking is invalid or unenforceable.

All other questions, including whether the dispute is arbitrable or whether the written undertaking to arbitrate is subject to defenses or is otherwise invalid or unenforceable, shall be for the arbitral tribunal to decide. If any part of a dispute which cannot be submitted to arbitration for the reasons stated in paragraphs (a)-(c) is severable from the remainder of the dispute, the court may order arbitration to proceed with regard to the remainder.

(2) Upon timely application by a party, an action or proceeding in a court of this state involving a dispute that is subject to arbitration shall be stayed by the court if an order compelling arbitration of the dispute could issue under subsection (1). Upon application by a party, the stay may be accompanied by an order compelling arbitration. This subsection shall not apply to any court proceeding pursuant to s. 684.23 or s. 684.24.

(3) Upon timely application by a party, a circuit court of this state may enjoin another party from proceeding with an action before any court within or without this state involving a dispute that is subject to arbitration if an order compelling arbitration of the dispute could issue under subsection (1). The injunction may, upon application by a party, be accompanied by an order compelling arbitration.

This subsection shall not apply to any court proceeding pursuant to s. 684.23 or s. 684.24.

(4) Upon timely application by a party, a circuit court of this state may stay the arbitration of a dispute if an order compelling arbitration could not issue under subsection (1). Such stay shall issue whether the place of arbitration is within or without this state.

684.23. Court proceedings during arbitration

(1) Upon application by a party to a written undertaking to arbitrate, a circuit court of this state may appoint an arbitral tribunal or any member thereof or successor thereto, if the parties have failed to agree upon a method of appointment or if the method agreed upon fails or cannot be followed and, in either case, the parties have not otherwise agreed upon a named arbitrator or arbitrators. Any arbitrator so appointed shall exercise all powers and functions provided for in the written undertaking to arbitrate.

(2) Upon application by an arbitral tribunal or by a party authorized by the tribunal, a circuit court of this state:

(a) Shall enforce any subpoena, demand, or order of the tribunal for:

1. The attendance of witnesses,
2. The production of books, records, documents, or other evidence,
3. The taking of depositions, or
4. The obtaining of other discovery,

in the manner provided by law for the enforcement of subpoenas, demands, or other such orders in civil actions; and

(b) Shall, to the extent of its powers, render such other assistance as the movant may request, including issuance of letters rogatory or other requests for foreign judicial assistance.

(3) Upon application by an arbitral tribunal or by a party authorized by a tribunal to make the application, a circuit court of this state may grant any interim relief, including, without limitation, temporary restraining orders, preliminary injunctions, attachments, garnishments, or writs of replevin, which it is empowered by law to grant. All actions under this subsection shall be subject to such procedural requirements and other conditions as would apply in a comparable action not pertaining to an arbitration.

(4) The provisions of subsection (3) are without prejudice to the right of a party to an arbitration to seek interim relief directly from any court of competent jurisdiction, provided that no such relief shall be granted by the courts of this state unless the moving party shows that an application to the arbitral tribunal for that relief would prejudice the party's rights and that interim relief from the court is necessary to protect those rights. The tribunal shall be deemed a party in interest in any such action. Any court of this state that issues an order for interim relief as provided in this subsection shall, upon application by the tribunal, modify or terminate its order as appropriate.

(5) Upon application by a party showing that the arbitral tribunal has unduly delayed issuance of its final award, a circuit court of this state may fix a time within which a final award must issue, but only if the place of arbitration is within this state or the arbitration is subject to part II of this chapter. The tribunal shall be deemed a party in interest in any such action.

(6) The powers conferred upon the courts by this section may be exercised without regard to whether the place of arbitration is within or without this state, unless otherwise expressly provided.

#### 684.24. Court proceedings upon final awards

(1) Any party to an arbitration within the scope of this chapter may apply to a circuit court of this state for an order to confirm or vacate any final award or to declare that the award is not entitled to confirmation by the courts of this state. The court shall dispose of all such applications as provided in paragraphs (a)-(c) without regard to the law of the place of arbitration, the law governing the award, or whether a court of law or equity would apply the law or decisional principles applied by the arbitral tribunal or would grant the relief provided for in the award.

(a) The court shall confirm the award without regard to the place of arbitration unless one or more of the grounds set forth in s. 684.25 is established by way of an affirmative defense. If such a defense is established and the conditions set forth in paragraph (b) are met, the court, upon application, shall vacate the award without regard to any time limit contained in paragraph (3)(b); otherwise, it shall issue an order declaring that the award is not entitled to confirmation by the courts of this state.

(b) The court shall grant an application to vacate the award if:

1. The applicant establishes one or more of the grounds set forth in s. 684.25; and
2. Either the place of arbitration was in this state or the arbitration was subject to part II of this chapter.

If the applicant fails to establish one or more of the grounds set forth in s. 684.25, the court, upon application by any party, shall enter an order confirming the award.

(c) The court shall declare that the award is not entitled to confirmation by the courts of this state if the applicant establishes one or more of the grounds set forth in s. 684.25, but the place of arbitration was outside this state and the arbitration was not subject to part II of this chapter.

(2) In any action under subsection (1), the judgment of a court in a foreign country determining whether one or more of the grounds set forth in s. 684.25 is established shall be accorded the effect normally given the judgment of a court in a foreign country by the courts of this state.

(3) The applications referred to in subsection (1) shall be brought within the following time limits:

(a) An application to confirm an award shall be brought within the time provided in s. 95.051(1) for the enforcement of judgments.

(b) An application to vacate an award or for a declaration that the award is not entitled to confirmation

by the courts of this state shall be brought within 90 days of receipt of the final award by the applicant or, in the case of an application based on s. 684.25(1)(d) or (e), within 90 days of the date when the circumstances giving rise to the application were discovered or, with the exercise of due diligence, should have been discovered by the applicant.

(c) If any party to an arbitration shall die or become incompetent, a court may extend the foregoing time limits.

(4) In considering an application filed under subsection (1), a court may request the arbitral tribunal to clarify its award and may modify or correct the award for any evident miscalculation or mistake in the description of any person or property or for any imperfection of form not affecting the merits.

(5) A judgment or decree of a court of this state confirming an award may, upon application, be vacated at any time on the grounds set forth in s. 684.25 (1)(d) and (e), provided the application is made within 90 days of the date when the circumstances giving rise to the application were first discovered or, with the exercise of due diligence, should have been discovered by the applicant.

(6) If a final award has been reduced to judgment or made the subject of official action by any court, tribunal, or other governmental authority outside the United States, the courts of this state shall, except as provided in subsection (2), confirm, vacate, or declare the award not entitled to confirmation by the courts of this state without regard to any term or condition of the foreign judgment or official action and without regard to whether the award may be deemed merged into the judgment.

(7) For purposes of this section and of s. 684.25, an arbitral award shall be deemed a final award unless:

(a) It is expressly designated an interim or interlocutory award or by its terms is not final;

(b) An application to vacate, clarify, correct, or amend the award is pending before the arbitral tribunal; or

(c) Under the rules applicable to the arbitration, it is subject to further review by any arbitral authority.

For purposes of the law of this state, an award which is final as described above shall be deemed final regardless of whether judicial confirmation or other official action is necessary to render that award final within the contemplation of any foreign law which may be applicable to the arbitration.

#### 684.25. Grounds for vacating an award or declaring it not entitled to confirmation

(1) A final award shall be vacated or declared not entitled to confirmation by the courts of this state only if one or more of the following grounds is established:

(a) There was no written undertaking to arbitrate, there was fraud in the inducement of that undertaking, or an arbitral tribunal impaneled in accordance with the undertaking had previously determined that the dispute was nonarbitrable or that the undertaking was invalid or unenforceable, unless the party challenging the award participated on the merits in the arbitral proceedings leading to the award without first having submitted such questions to the arbitral tribunal;

- (b) The party challenging the award was not given notice of the appointment of the arbitral tribunal or of the arbitral proceedings, unless notice proved impossible after efforts reasonably designed to give actual notice or such party waived notice or participated in those proceedings on the merits of the dispute;
- (c) The arbitral tribunal conducted its proceedings so unfairly as to substantially prejudice the rights of the party challenging the award;
- (d) The award was obtained by corruption, fraud, or undue influence or is contrary to the public policy of the United States or of this state;
- (e) Any neutral arbitrator had a material conflict of interest with the party challenging the award, unless that party had timely notice of the conflict and proceeded without objection to arbitrate the dispute;
- (f) The award resolves a dispute which the parties did not agree to refer to the arbitral tribunal, unless the party objecting shall have arbitrated the dispute without objection, and the tribunal's decision that such dispute was referred to it for arbitration was clearly erroneous, provided that a court may determine instead to vacate or to declare not entitled to confirmation only that portion of the award dealing with the excluded dispute; or
- (g) The arbitral tribunal was not constituted in accordance with the agreement of the parties, unless the party challenging the award waived the irregularity or participated in the arbitral proceedings without first objecting thereto.
- (2) The courts of this state shall not make an independent factual determination concerning whether the grounds described in paragraph (1)(c), paragraph (1)(f), or paragraph (1)(g) are present if the arbitration leading to the award was conducted under the rules of, or was subject to supervision by, an arbitral authority and such grounds were submitted to such authority as a basis for challenging the validity of the award or the conduct of the arbitration. In such a case, the determination of the arbitral authority concerning such grounds shall be final. In addition, if under the rules applicable to an arbitration the grounds described in paragraph (1)(c), paragraph (1)(f), or paragraph (1)(g) could have been but were not submitted to an arbitral authority as a basis for challenging the validity of the award or the conduct of the arbitration, the courts of this state shall not declare an award not entitled to confirmation or vacate that award or deny it confirmation on such grounds.
- (3) A court issuing an order to vacate an award or to declare that an award is not entitled to confirmation by the courts of this state may also order that all or part of the dispute between the parties be resubmitted to the same or a new arbitral tribunal as it deems appropriate.

#### 684.26. Award in a foreign currency

The courts of this state shall confirm a final award, notwithstanding the fact that it grants relief in a currency other than United States dollars. In such case, the court shall, in addition to entering the order in the foreign currency designated by the award, upon application by a party also enter that order in United States dollars determined by reference to the market rate of exchange prevailing in this state on

the date the award was issued, unless the award itself fixes some other date. If no such market rate of exchange is available, the court shall fix the rate it deems appropriate. Judgment or decree may be entered upon such an order as provided in s. 684.27.

#### 684.27. Judgment or decree on a final award

Once an order confirming or vacating an award or declaring that an award is not entitled to confirmation by the courts of this state has been rendered, a judgment or decree shall be entered in conformity with that order to be enforced like any other judgment or decree. Upon entry of a judgment or decree, the court may also, in its discretion, award costs and disbursements.

#### 684.28. Judgment roll; docketing

(1) Upon entry of a judgment or decree, the clerk shall prepare the judgment roll consisting, to the extent filed, of the following:

- (a) The final award;
- (b) A copy of the order; and
- (c) A copy of the judgment or decree.

(2) The judgment or decree may be docketed as if rendered in a civil action.

#### 684.29. Application to circuit court; form and process

An application to a circuit court of this state pursuant to this chapter shall be by motion and shall be heard in the manner provided by law or rule of the court for the making and hearing of motions. Process in connection with such an application shall be served as provided in s. 48.196.

#### 684.30. Consent to jurisdiction

The conduct of an arbitration within this state, or the making of a written undertaking to arbitrate which provides for arbitration within this state or subject to part II of this chapter, shall constitute a consent to the exercise of in personam jurisdiction by the courts of this state in any action authorized by this part.

#### 684.31. Venue

An application under this chapter shall be made to the circuit court for the county in which any party to the arbitration resides or has a place of business or in which the place of arbitration is located. If no such party resides or has a place of business within this state and if the place of arbitration is outside this state, then the application may be made to any circuit court of this state. All applications made subsequent to an initial application under this chapter shall be made to the court hearing the initial application, unless it shall order otherwise.

#### 684.32. Appeals

(1) An appeal may be taken from any of the following:

(a) An order under s. 684.22 granting or denying an application to compel or to stay arbitration or to stay judicial proceedings.

(b) An order granting or denying an application under s. 684.23(2) for assistance in obtaining evidence or an application under s. 684.23(3) for interim relief.

(c) An order under s. 684.24 confirming or vacating a final award or declaring that an award is not entitled to confirmation by the courts of this state.

(d) A judgment or decree entered pursuant to s. 684.27.

(2) Appeals shall be taken in the same manner and be subject to the same scope of review as appeals from orders or judgments in civil actions. All appeals shall be confined to questions within the competence conferred by this chapter upon the court from which the appeal is taken or to the question of whether such court exceeded that competence.

#### 684.33. Transitional rule

This chapter shall apply to all written undertakings to arbitrate within the scope of this chapter, whether entered into before or after October 1, 1986; however, this part shall not apply to any judicial proceeding commenced prior to that date, and part II of this chapter shall not apply to any arbitration commenced prior to that date unless the parties agree to the contrary in writing.

#### 684.34. Severability and characterization

(1) If any provision of this chapter or its application to any particular person or circumstance is held invalid, that provision or its application shall be deemed severable and shall not affect the validity of other provisions or applications of this chapter.

(2) If in any arbitral, judicial, or other official proceeding within or without this state it shall become necessary to classify any provision of this chapter as substantive or procedural within the meaning of those terms in the conflict of laws, all provisions of this chapter relating to the obligation of the parties to arbitrate, to the conduct of the arbitral proceedings, and to the validity of arbitral awards shall be classified as substantive.

#### 684.35. Immunity for arbitrators

No person may sue in the courts of this state or assert a cause of action under the law of this state against any arbitrator when such suit or action arises from the performance of such arbitrator's duties.

### **Seed**

Title XXXV, Chapter 578.

*Current through the 2008 Second Regular Session*

578.26. Complaint, investigation, hearings, findings, and recommendation prerequisite to legal action

(1)(a) When any farmer is damaged by the failure of agricultural, vegetable, flower, or forest tree seed to produce or perform as represented by the label attached to the seed as required by s. 578.09, as a prerequisite to her or his right to maintain a legal action against the dealer from whom the seed was purchased, the farmer shall make a sworn complaint against the dealer alleging damages sustained. The complaint shall be filed with the department, and a copy of the complaint shall be served by the department on the dealer by certified mail, within such time as to permit inspection of the crops, plants, or trees by the seed investigation and conciliation council or its representatives and by the dealer from whom the seed was purchased.

(b) Language setting forth the requirement for filing and serving the complaint shall be legibly typed or printed on the analysis label or be attached to the package containing the seed at the time of purchase by the farmer.

(c) A nonrefundable filing fee of \$100 shall be paid to the department with each complaint filed. However, the complainant may recover the filing fee cost from the dealer upon the recommendation of the seed investigation and conciliation council.

(2) Within 15 days after receipt of a copy of the complaint, the dealer shall file with the department her or his answer to the complaint and serve a copy of the answer on the farmer by certified mail. Upon receipt of the findings and recommendation of the arbitration council, the department shall transmit them to the farmer and to the dealer by certified mail.

(3) The department shall refer the complaint and the answer thereto to the seed investigation and conciliation council provided in s. 578.27 for investigation, informal hearing, findings, and recommendation on the matters complained of.

(a) Each party shall be allowed to present its side of the dispute at an informal hearing before the seed investigation and conciliation council. Attorneys may be present at the hearing to confer with their clients. However, no attorney may participate directly in the proceeding.

(b) Hearings, including the deliberations of the seed investigation and conciliation council, shall be open to the public.

(c) Within 30 days after completion of a hearing, the seed investigation and conciliation council shall transmit its findings and recommendations to the department.

Upon receipt of the findings and recommendation of the seed investigation and conciliation council, the department shall transmit them to the farmer and to the dealer by certified mail.

(4) The department shall provide administrative support for the seed investigation and conciliation council and shall adopt rules to govern investigations and hearings. A copy of the rules shall be mailed to each party, upon receipt of a complaint by the department.

**Rules for Mediation and Arbitration**  
Florida Rules of Civil Procedure

*Current with Amendments received through September 2008*

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.

(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 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.

### 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.

### 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 when mediation is interrupted pending resolution of such a motion.

(b) 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 an award of mediator and attorneys' fees and other costs, against the party failing to appear. If a party to mediation is a public entity required to conduct its business pursuant to chapter 286, Florida Statutes, that party shall be deemed to appear at a mediation conference by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body of the entity. Otherwise, unless stipulated by the parties or changed by order of the court, a party is deemed to appear at a mediation conference if the following persons are physically present:

(1) The party or its representative having full authority to settle without further consultation.

(2) The party's counsel of record, if any.

(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 up to the amount of the plaintiff's last demand or policy

limits, whichever is less, without further consultation.

(c) Adjournments. The mediator may adjourn the mediation conference at any time and may set times for reconvening the adjourned conference notwithstanding rule 1.710(a). No further notification is required for parties present at the adjourned conference.

(d) 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.

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

(f) Appointment of the Mediator.

(1) Within 10 days of the order of referral, the parties may agree upon a stipulation with the court designating:

(A) a certified mediator; or

(B) a mediator, 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.

(g) 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.

#### 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. 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, attorneys' fees, or other appropriate remedies including entry of judgment on the agreement.

#### Rule 1.800. Exclusions From Arbitration

A civil action shall be ordered to arbitration or arbitration in conjunction with mediation upon stipulation of the parties. A civil action may be ordered to arbitration or arbitration in conjunction with mediation upon motion of any party or by the court, if the judge determines the action to be of such a nature that arbitration could be of benefit to the litigants or the court. Under no circumstances may the following categories of actions be referred to arbitration:

- (1) Bond estreatures.
- (2) Habeas corpus or other extraordinary writs.
- (3) Bond validations.
- (4) Civil or criminal contempt.
- (5) Such other matters as may be specified by order of the chief judge in the circuit.

#### Rule 1.810. Selection and Compensation of Arbitrators

(a) Selection. The chief judge of the circuit or a designee shall maintain a list of qualified persons who have agreed to serve as arbitrators. Cases assigned to arbitration shall be assigned to an arbitrator or to a panel of 3 arbitrators. The court shall determine the number of arbitrators and designate them within 15 days after service of the order of referral in the absence of an agreement by the parties. In the case of a panel, one of the arbitrators shall be appointed as the chief arbitrator. Where there is only one arbitrator, that person shall be the chief arbitrator.

(b) Compensation. The chief judge of each judicial circuit shall establish the compensation of arbitrators subject to the limitations in section 44.103(3), Florida Statutes.

#### Rule 1.820. Hearing Procedures for Non-Binding Arbitration

(a) Authority of the Chief Arbitrator. The chief arbitrator shall have authority to commence and adjourn the arbitration hearing and carry out other such duties as are prescribed by section 44.103, Florida Statutes. The chief arbitrator shall not have authority to hold any person in contempt or to in any way impose sanctions against any person.

(b) Conduct of the Arbitration Hearing.

(1) The chief judge of each judicial circuit shall set procedures for determining the time and place of the arbitration hearing and may establish other procedures for the expeditious and orderly operation of the arbitration hearing to the extent such procedures are not in conflict with any rules of court.

(2) Hearing procedures shall be included in the notice of arbitration hearing sent to the parties and arbitration panel.

(3) Individual parties or authorized representatives of corporate parties shall attend the arbitration hearing unless excused in advance by the chief arbitrator for good cause shown.

(c) Rules of Evidence. The hearing shall be conducted informally. Presentation of testimony shall be kept to a minimum, and matters shall be presented to the arbitrator(s) primarily through the statements and arguments of counsel.

(d) Orders. The chief arbitrator may issue instructions as are necessary for the expeditious and orderly conduct of the hearing. The chief arbitrator's instructions are not appealable. Upon notice to all parties the chief arbitrator may apply to the presiding judge for orders directing compliance with such instructions. Instructions enforced by a court order are appealable as are other orders of the court.

(e) Default of a Party. When a party fails to appear at a hearing, the chief arbitrator may proceed with the hearing and the arbitration panel shall render a decision based upon the facts and circumstances as presented by the parties present.

(f) Record and Transcript. Any party may have a record and transcript made of the arbitration hearing at that party's expense.

(g) Completion of the Arbitration Process.

(1) Arbitration shall be completed within 30 days of the first arbitration hearing unless extended by order of the court on motion of the chief arbitrator or of a party. No extension of time shall be for a period exceeding 60 days from the date of the first arbitration hearing.

(2) Upon the completion of the arbitration process, the arbitrator(s) shall render a decision. In the case of a panel, a decision shall be final upon a majority vote of the panel.

(3) Within 10 days of the final adjournment of the arbitration hearing, the arbitrator(s) shall notify the parties, in writing, of their decision. The arbitration decision may set forth the issues in controversy and the arbitrator('s)(s') conclusions and findings of fact and law. The arbitrator('s)(s') decision and the originals of any transcripts shall be sealed and filed with the clerk at the time the parties are notified of

the decision.

(h) Time for Filing Motion for Trial. Any party may file a motion for trial. If a motion for trial is filed by any party, any party having a third-party claim at issue at the time of arbitration may file a motion for trial within 10 days of service of the first motion for trial. If a motion for trial is not made within 20 days of service on the parties of the decision, the decision shall be referred to the presiding judge, who shall enter such orders and judgments as may be required to carry out the terms of the decision as provided by section 44.103(5), Florida Statutes.

#### Rule 1.830. Voluntary Binding Arbitration

##### (a) Absence of Party Agreement.

(1) Compensation. In the absence of an agreement by the parties as to compensation of the arbitrator(s), the court shall determine the amount of compensation subject to the provisions of section 44.104(3), Florida Statutes.

(2) 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. In the absence of such agreement, the court shall establish the hearing procedures.

(b) Record and Transcript. A record and transcript may be made of the arbitration hearing if requested by any party or at the direction of the chief arbitrator. The record and transcript may be used in subsequent legal proceedings subject to the Florida Rules of Evidence.

##### (c) Arbitration Decision and Appeal.

(1) The arbitrator(s) shall serve the parties with notice of the decision and file the decision with the court within 10 days of the final adjournment of the arbitration hearing.

(2) A voluntary binding arbitration decision may be appealed within 30 days after service of the decision on the parties. Appeal is limited to the grounds specified in section 44.104(10), Florida Statutes.

(3) If no appeal is filed within the time period set out in subdivision (2) of this rule, the decision shall be referred to the presiding judge who shall enter such orders and judgments as required to carry out the terms of the decision as provided under section 44.104(11), Florida Statutes.

### **Florida Rules for Court-Appointed Arbitrators**

*Current with Amendments received through September 2008*

#### **Part I. Arbitrator Qualifications**

##### Rule 11.010. Qualification

Arbitrators shall be members of The Florida Bar, except where otherwise agreed by the parties. The

chief arbitrator shall have been a member of The Florida Bar for at least 5 years. Individuals who are not members of The Florida Bar may serve as arbitrators only on an arbitration panel and then only upon the written agreement of all parties.

#### Rule 11.020. Training

All arbitrators, except as noted below, shall attend 4 hours of training in a program approved by the Supreme Court of Florida. This rule shall not preclude the parties from agreeing to use the services of an arbitrator who has not completed the required training. Any former Florida trial judge who has not completed the training shall be exempt from the training requirements upon submission of documentation of such experience to the chief judge. The supreme court or chief justice may grant a waiver of the training requirement to any group possessing special qualifications which obviate the necessity of such training.

### **Part II. Standards of Professional Conduct**

#### Rule 11.030. Preamble

(a) Scope; Purpose. These rules are intended to instill and promote public confidence in arbitration conducted pursuant to chapter 44, Florida Statutes, and to be a guide to arbitrator conduct. As with other forms of dispute resolution, arbitration must be built on public understanding and confidence. Persons serving as arbitrators are responsible to the parties, the public, and the courts to conduct themselves in a manner which will merit that confidence. These rules apply to all arbitrators who participate in arbitration conducted pursuant to chapter 44 and are a guide to arbitrator conduct in discharging their professional responsibilities in the arbitration of cases in the State of Florida.

(b) Arbitration Defined. Pursuant to chapter 44, Florida Statutes, arbitration is a process whereby a neutral third person or panel considers the facts and arguments presented by the parties and renders a decision which may be binding or nonbinding.

#### Rule 11.040. General Standards and Qualifications

(a) Integrity, Impartiality, and Competence. Integrity, impartiality, and professional competence are essential qualifications of any arbitrator. An arbitrator is in a relation of trust to the parties and shall adhere to the highest standards of integrity, impartiality, and professional competence in rendering professional service.

(1) An arbitrator shall not accept any engagement, perform any service, or undertake any act which would compromise the arbitrator's integrity.

(2) An arbitrator shall maintain professional competence in arbitration skills including, but not limited to:

(A) staying informed of and abiding by all statutes, rules, and administrative orders relevant to the practice of arbitration conducted pursuant to chapter 44, Florida Statutes; and

(B) regularly engaging in educational activities promoting professional growth.

(3) An arbitrator shall decline appointment, withdraw, or request technical assistance when the arbitrator decides that a case is beyond the arbitrator's competence.

(b) Concurrent Standards. Nothing herein shall replace, eliminate, or render inapplicable relevant ethical standards, not in conflict with these rules, which may be imposed upon any arbitrator by virtue of the arbitrator's professional calling.

(c) Continuing Obligations. The ethical obligations begin upon acceptance of the appointment and continue throughout all stages of the proceeding. In addition, whenever specifically set forth in these rules, certain ethical obligations begin as soon as a person is requested to serve as an arbitrator, and certain ethical obligations continue even after the decision in the case has been given to the parties.

#### Rule 11.050. Responsibilities to the Courts

An arbitrator shall be candid, accurate, and fully responsive to a court concerning the arbitrator's qualifications, availability, and all other pertinent matters. An arbitrator shall observe all administrative policies, local rules of court, applicable procedural rules, and statutes. An arbitrator is responsible to the judiciary for the propriety of the arbitrator's activities and must observe judicial standards of fidelity and diligence. An arbitrator shall refrain from any activity which has the appearance of improperly influencing a court to secure placement on a roster or appointment to a case, including gifts or other inducements to court personnel.

#### Rule 11.060. The Arbitration Process

(a) Avoidance of Delays. An arbitrator shall plan a work schedule so that present and future commitments will be fulfilled in a timely manner. An arbitrator shall refrain from accepting appointments when it becomes apparent that completion of the arbitration assignments accepted cannot be completed in a timely fashion. An arbitrator shall perform the arbitrator's services in a timely and expeditious fashion, avoiding delays whenever possible.

(b) Conduct of Proceedings.

(1) An arbitrator shall conduct the proceedings evenhandedly and treat all parties with equality and fairness at all stages of the proceedings.

(2) An arbitrator must afford a hearing which provides both parties the opportunity to present their respective positions pursuant to the arbitration rules.

(3) An arbitrator should be patient and courteous to the parties, to their lawyers, and to the witnesses and should encourage similar conduct by all participants in the proceedings.

(c) Decision-Making.

(1) An arbitrator should, after careful deliberation, decide all issues submitted for determination. An arbitrator should decide no other issues.

(2) An arbitrator should not delegate the duty to decide to any other person.

(3) If all parties agree upon a settlement of the issues in dispute and request an arbitrator to embody that agreement in an award, an arbitrator may do so, but is not required to do so unless satisfied with the propriety of the terms of the settlement. Whenever an arbitrator embodies a settlement by the parties in an award, the arbitrator should state in the award that it is based on an agreement of the parties.

(d) The Award. The award should be definite, certain, and as concise as possible.

#### Rule 11.070. Ex Parte Communication

(a) General. Arbitrators communicating with the parties should avoid impropriety or the appearance of impropriety.

(b) When Permissible. Arbitrators should not discuss a case with any party in the absence of each other party, except in the following circumstances:

- (1) Discussions may be held with a party concerning such matters as setting the time and place of hearings or making other arrangements for the conduct of the proceedings. However, the arbitrator should promptly inform each other party of the discussion and should not make any final determination concerning the matter discussed before giving each absent party an opportunity to express its views.
- (2) If a party fails to be present at a hearing after having been given due notice, the arbitrator may discuss the case with any party who is present.
- (3) If all parties request or consent, such discussion may take place.

(c) **Written Communications.** Whenever an arbitrator communicates in writing with one party, the arbitrator should at the same time send a copy of the communication to each other party. Whenever an arbitrator receives any written communication concerning the case from one party which has not already been sent to each other party, the arbitrator should do so.

#### Rule 11.080. Impartiality

(a) **Impartiality.** An arbitrator shall be impartial and advise all parties of any circumstances bearing on possible bias, prejudice, or impartiality. Impartiality means freedom from favoritism or bias in word, action, and appearance.

- (1) Arbitrators should conduct themselves in a way that is fair to all parties and should not be swayed by outside pressure, public clamor, fear of criticism, or self-interest.
- (2) An arbitrator shall withdraw from an arbitration if the arbitrator believes the arbitrator can no longer be impartial.
- (3) An arbitrator shall not give or accept a gift, request, favor, loan, or other item of value to or from a party, attorney, or any other person involved in and arising from any arbitration process.
- (4) After accepting appointment, and for a reasonable period of time after the decision of the case, an arbitrator should avoid entering into family, business, or personal relationships which could affect impartiality or give the appearance of partiality, bias, or influence.

#### (b) **Conflicts of Interest and Relationships; Required Disclosures; Prohibitions**

- (1) An arbitrator must disclose any current, past, or possible future representation or consulting relationship with any party or attorney involved in the arbitration. Disclosure must also be made of any pertinent pecuniary interest. All such disclosures shall be made as soon as practical after the arbitrator becomes aware of the interest or relationship.
- (2) An arbitrator must disclose to the parties or to the court involved any close personal relationship or other circumstance, in addition to those specifically mentioned earlier in this rule, which might reasonably raise a question as to the arbitrator's impartiality. All such disclosures shall be made as soon as practical after the arbitrator becomes aware of the interest or relationship.
- (3) The burden of disclosure rests on the arbitrator. After disclosure, the arbitrator may serve if both parties so desire. If the arbitrator believes or perceives that there is a clear conflict of interest, the arbitrator should withdraw, irrespective of the expressed desire of the parties.
- (4) An arbitrator shall not use the arbitration process to solicit, encourage, or otherwise incur future professional services with either party.

#### Rule 11.090. Relationship With Other Professionals

When there is more than one arbitrator, the arbitrators should afford each other the full opportunity to participate in all aspects of the proceedings.

#### Rule 11.100. Fees and Expenses

An arbitrator occupies a position of trust with respect to the parties and the courts. In charging for services and expenses, the arbitrator must be governed by the same high standard of honor and integrity which applies to all other phases of the arbitrator's work. An arbitrator must keep total charges for services and expenses reasonable and consistent with the nature of the case or within statutory payment limitations.

#### Rule 11.110. Training and Education

(a) Training. An arbitrator is obligated to acquire knowledge and training in the arbitration process, including an understanding of appropriate professional ethics, standards, and responsibilities. Upon request, an arbitrator is required to disclose the extent and nature of the arbitrator's training and experience.

(b) Continuing Education. It is important that arbitrators continue their professional education throughout the period of their active service. An arbitrator shall be personally responsible for ongoing professional growth, including participation in such continuing education as may be required by law.

(c) New Arbitrator Training. An experienced arbitrator should cooperate in the training of new arbitrators.

#### Rule 11.120. Advertising

All advertising by an arbitrator must represent honestly the services to be rendered. No claims of specific results or promises which imply favoritism to one side should be made for the purpose of obtaining business. An arbitrator shall make only accurate statements about the arbitration process, its costs and benefits, and the arbitrator's qualifications.

### **Mediation Alternatives to Judicial Action**

Title V, Chapter 44.

*Current through the 2008 Second Regular Session*

#### 44.1011. Definitions

As used in this chapter:

(1) "Arbitration" means a process whereby a neutral third person or panel, called an arbitrator or arbitration panel, considers the facts and arguments presented by the parties and renders a decision which may be binding or nonbinding as provided in this chapter.

(2) "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 nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decisionmaking 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. "Mediation" includes:

- (a) “Appellate court mediation,” which means mediation that occurs during the pendency of an appeal of a civil case.
- (b) “Circuit court mediation,” which means mediation of civil cases, other than family matters, in circuit court. If a party is represented by counsel, the counsel of record must appear unless stipulated to by the parties or otherwise ordered by the court.
- (c) “County court mediation,” which means mediation of civil cases within the jurisdiction of county courts, including small claims. Negotiations in county court mediation are primarily conducted by the parties. Counsel for each party may participate. However, presence of counsel is not required.
- (d) “Family mediation” which means mediation of family matters, including married and unmarried persons, before and after judgments involving dissolution of marriage; property division; shared or sole parental responsibility; or child support, custody, and visitation involving emotional or financial considerations not usually present in other circuit civil cases. Negotiations in family mediation are primarily conducted by the parties. Counsel for each party may attend the mediation conference and privately communicate with their clients. However, presence of counsel is not required, and, in the discretion of the mediator, and with the agreement of the parties, mediation may proceed in the absence of counsel unless otherwise ordered by the court.
- (e) “Dependency or in need of services mediation,” which means mediation of dependency, child in need of services, or family in need of services matters. Negotiations in dependency or in need of services mediation are primarily conducted by the parties. Counsel for each party may attend the mediation conference and privately communicate with their clients. However, presence of counsel is not required and, 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.

#### 44.102. Court-ordered mediation

- (1) Court-ordered mediation shall be conducted according to rules of practice and procedure adopted by the Supreme Court.
- (2) A court, under rules adopted by the Supreme Court:
- (a) Must, upon request of one party, refer to mediation any filed civil action for monetary damages, provided the requesting party is willing and able to pay the costs of the mediation or the costs can be equitably divided between the parties, unless:
1. The action is a landlord and tenant dispute that does not include a claim for personal injury.
  2. The action is filed for the purpose of collecting a debt.
  3. The action is a claim of medical malpractice.
  4. The action is governed by the Florida Small Claims Rules.
  5. The court determines that the action is proper for referral to nonbinding arbitration under this

chapter.

6. The parties have agreed to binding arbitration.

7. The parties have agreed to an expedited trial pursuant to s. 45.075.

8. The parties have agreed to voluntary trial resolution pursuant to s. 44.104.

(b) May refer to mediation all or any part of a filed civil action for which mediation is not required under this section.

(c) In circuits in which a family mediation program has been established and upon a court finding of a dispute, shall refer to mediation all or part of custody, visitation, or other parental responsibility issues as defined in s. 61.13. Upon motion or request of a party, a court shall not refer any case to mediation if it finds there has been a history of domestic violence that would compromise the mediation process.

(d) In circuits in which a dependency or in need of services mediation program has been established, may refer to mediation all or any portion of a matter relating to dependency or to a child in need of services or a family in need of services.

(3) All written communications in a mediation proceeding, other than an executed settlement agreement, shall be exempt from the requirements of chapter 119.

(4) The chief judge of each judicial circuit shall maintain a list of mediators who have been certified by the Supreme Court and who have registered for appointment in that circuit.

(a) Whenever possible, qualified individuals who have volunteered their time to serve as mediators shall be appointed. If a mediation program is funded pursuant to s. 44.108, volunteer mediators shall be entitled to reimbursement pursuant to s. 112.061 for all actual expenses necessitated by service as a mediator.

(b) Nonvolunteer mediators shall be compensated according to rules adopted by the Supreme Court. If a mediation program is funded pursuant to s. 44.108, a mediator may be compensated by the county or by the parties.

(5)(a) When an action is referred to mediation by court order, the time periods for responding to an offer of settlement pursuant to s. 45.061, or to an offer or demand for judgment pursuant to s. 768.79, respectively, shall be tolled until:

1. An impasse has been declared by the mediator; or

2. The mediator has reported to the court that no agreement was reached.

(b) Sections 45.061 and 768.79 notwithstanding, an offer of settlement or an offer or demand for judgment may be made at any time after an impasse has been declared by the mediator, or the mediator has reported that no agreement was reached. An offer is deemed rejected as of commencement of trial.

#### 44.103. Court-ordered, nonbinding arbitration

(1) Court-ordered, nonbinding arbitration shall be conducted according to the rules of practice and procedure adopted by the Supreme Court.

(2) A court, pursuant to rules adopted by the Supreme Court, may refer any contested civil action filed in a circuit or county court to nonbinding arbitration.

(3) Arbitrators shall be selected and compensated in accordance with rules adopted by the Supreme Court. Arbitrators shall be compensated by the parties, or, upon a finding by the court that a party is indigent, an arbitrator may be partially or fully compensated from state funds according to the party's present ability to pay. At no time may an arbitrator charge more than \$1,500 per diem, unless the parties agree otherwise. Prior to approving the use of state funds to reimburse an arbitrator, the court must ensure that the party reimburses the portion of the total cost that the party is immediately able to pay and that the party has agreed to a payment plan established by the clerk of the court that will fully reimburse the state for the balance of all state costs for both the arbitrator and any costs of administering the payment plan and any collection efforts that may be necessary in the future. Whenever possible, qualified individuals who have volunteered their time to serve as arbitrators shall be appointed. If an arbitration program is funded pursuant to s. 44.108, volunteer arbitrators shall be entitled to be reimbursed pursuant to s. 112.061 for all actual expenses necessitated by service as an arbitrator.

(4) An arbitrator or, in the case of a panel, the chief arbitrator, shall have such power to administer oaths or affirmations and to conduct the proceedings as the rules of court shall provide. The hearing shall be conducted informally. Presentation of testimony and evidence shall be kept to a minimum, and matters shall be presented to the arbitrators primarily through the statements and arguments of counsel. Any party to the arbitration may petition the court in the underlying action, for good cause shown, to authorize the arbitrator to issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence at the arbitration and may petition the court for orders compelling such attendance and production at the arbitration. Subpoenas shall be served and shall be enforceable in the manner provided by law.

(5) The arbitration decision shall be presented to the parties in writing. An arbitration decision shall be final if a request for a trial de novo is not filed within the time provided by rules promulgated by the Supreme Court. The decision shall not be made known to the judge who may preside over the case unless no request for trial de novo is made as herein provided or unless otherwise provided by law. If no request for trial de novo is made within the time provided, the decision shall be referred to the presiding judge in the case who shall enter such orders and judgments as are required to carry out the terms of the decision, which orders shall be enforceable by the contempt powers of the court, and for which judgments execution shall issue on request of a party.

(6) Upon motion made by either party within 30 days after entry of judgment, the court may assess costs against the party requesting a trial de novo, including arbitration costs, court costs, reasonable attorney's fees, and other reasonable costs such as investigation expenses and expenses for expert or other testimony which were incurred after the arbitration hearing and continuing through the trial of the case in accordance with the guidelines for taxation of costs as adopted by the Supreme Court. Such costs may be assessed if:

(a) The plaintiff, having filed for a trial de novo, obtains a judgment at trial which is at least 25 percent less than the arbitration award. In such instance, the costs and attorney's fees pursuant to this section shall be set off against the award. When the costs and attorney's fees pursuant to this section total more than the amount of the judgment, the court shall enter judgment for the defendant against the plaintiff for the amount of the costs and attorney's fees, less the amount of the award to the plaintiff. For purposes of a determination under this paragraph, the term "judgment" means the amount of the net judgment entered, plus all taxable costs pursuant to the guidelines for taxation of costs as adopted by the Supreme Court, plus any postarbitration collateral source payments received or due as of the date of the judgment, and plus any postarbitration settlement amounts by which the verdict was reduced; or

(b) The defendant, having filed for a trial de novo, has a judgment entered against the defendant which is at least 25 percent more than the arbitration award. For purposes of a determination under this paragraph, the term "judgment" means the amount of the net judgment entered, plus any postarbitration settlement amounts by which the verdict was reduced.

#### 44.104. Voluntary binding arbitration and voluntary trial resolution

(1) Two or more opposing parties who are involved in a civil dispute may agree in writing to submit the controversy to voluntary binding arbitration, or voluntary trial resolution, in lieu of litigation of the issues involved, prior to or after a lawsuit has been filed, provided no constitutional issue is involved.

(2) If the parties have entered into an agreement which provides in voluntary binding arbitration for a method for appointing of one or more arbitrators, or which provides in voluntary trial resolution a method for appointing a member of The Florida Bar in good standing for more than 5 years to act as trial resolution judge, the court shall proceed with the appointment as prescribed. However, in voluntary binding arbitration at least one of the arbitrators, who shall serve as the chief arbitrator, shall meet the qualifications and training requirements adopted pursuant to s. 44.106. In the absence of an agreement, or if the agreement method fails or for any reason cannot be followed, the court, on application of a party, shall appoint one or more qualified arbitrators, or the trial resolution judge, as the case requires.

(3) The arbitrators or trial resolution judge shall be compensated by the parties according to their agreement.

(4) Within 10 days after the submission of the request for binding arbitration, or voluntary trial resolution, the court shall provide for the appointment of the arbitrator or arbitrators, or trial resolution judge, as the case requires. Once appointed, the arbitrators or trial resolution judge shall notify the parties of the time and place for the hearing.

(5) Application for voluntary binding arbitration or voluntary trial resolution shall be filed and fees paid to the clerk of court as if for complaints initiating civil actions. The clerk of the court shall handle and account for these matters in all respects as if they were civil actions, except that the clerk of court shall keep separate the records of the applications for voluntary binding arbitration and the records of the applications for voluntary trial resolution from all other civil actions.

(6) Filing of the application for binding arbitration or voluntary trial resolution will toll the running of

the applicable statutes of limitation.

(7) The chief arbitrator or trial resolution judge may administer oaths or affirmations and conduct the proceedings as the rules of court shall provide. At the request of any party, the chief arbitrator or trial resolution judge shall issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and may apply to the court for orders compelling attendance and production. Subpoenas shall be served and shall be enforceable in the manner provided by law.

(8) A voluntary binding arbitration hearing shall be conducted by all of the arbitrators, but a majority may determine any question and render a final decision. A trial resolution judge shall conduct a voluntary trial resolution hearing. The trial resolution judge may determine any question and render a final decision.

(9) The Florida Evidence Code shall apply to all proceedings under this section.

(10) An appeal of a voluntary binding arbitration decision shall be taken to the circuit court and shall be limited to review on the record and not de novo, of:

(a) Any alleged failure of the arbitrators to comply with the applicable rules of procedure or evidence.

(b) Any alleged partiality or misconduct by an arbitrator prejudicing the rights of any party.

(c) Whether the decision reaches a result contrary to the Constitution of the United States or of the State of Florida.

(11) Any party may enforce a final decision rendered in a voluntary trial by filing a petition for final judgment in the circuit court in the circuit in which the voluntary trial took place. Upon entry of final judgment by the circuit court, any party may appeal to the appropriate appellate court. Factual findings determined in the voluntary trial are not subject to appeal.

(12) The harmless error doctrine shall apply in all appeals. No further review shall be permitted unless a constitutional issue is raised.

(13) If no appeal is taken within the time provided by rules promulgated by the Supreme Court, then the decision shall be referred to the presiding judge in the case, or if one has not been assigned, then to the chief judge of the circuit for assignment to a circuit judge, who shall enter such orders and judgments as are required to carry out the terms of the decision, which orders shall be enforceable by the contempt powers of the court and for which judgments execution shall issue on request of a party.

(14) This section shall not apply to any dispute involving child custody, visitation, or child support, or to any dispute which involves the rights of a third party not a party to the arbitration or voluntary trial resolution when the third party would be an indispensable party if the dispute were resolved in court or when the third party notifies the chief arbitrator or the trial resolution judge that the third party would be a proper party if the dispute were resolved in court, that the third party intends to intervene in the action in court, and that the third party does not agree to proceed under this section.

44.106. Standards and procedures for mediators and arbitrators; fees

The Supreme Court shall establish minimum standards and procedures for qualifications, certification, professional conduct, discipline, and training for mediators and arbitrators who are appointed pursuant to this chapter. The Supreme Court is authorized to set fees to be charged to applicants for certification and renewal of certification. The revenues generated from these fees shall be used to offset the costs of administration of the certification process. The Supreme Court may appoint or employ such personnel as are necessary to assist the court in exercising its powers and performing its duties under this chapter.

#### 44.107. Immunity for arbitrators, mediators, and mediator trainees

(1) Arbitrators serving under s. 44.103 or s. 44.104, mediators serving under s. 44.102, and trainees fulfilling the mentorship requirements for certification by the Supreme Court as a mediator shall have judicial immunity in the same manner and to the same extent as a judge.

(2) A person serving as a mediator in any noncourt-ordered mediation shall have immunity from liability arising from the performance of that person's duties while acting within the scope of the mediation function if such mediation is:

(a) Required by statute or agency rule or order;

(b) Conducted under ss. 44.401-44.406 by express agreement of the mediation parties; or

(c) Facilitated by a mediator certified by the Supreme Court, unless the mediation parties expressly agree not to be bound by ss. 44.401-44.406.

The mediator does not have immunity if he or she acts in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(3) A person serving under s. 44.106 to assist the Supreme Court in performing its disciplinary function shall have absolute immunity from liability arising from the performance of that person's duties while acting within the scope of that person's appointed function.

#### 44.108. Funding of mediation and arbitration

(1) Mediation and arbitration should be accessible to all parties regardless of financial status. A filing fee of \$1 is levied on all proceedings in the circuit or county courts to fund mediation and arbitration services which are the responsibility of the Supreme Court pursuant to the provisions of s. 44.106. The clerk of the court shall forward the moneys collected to the Department of Revenue for deposit in the state courts' Mediation and Arbitration Trust Fund.

(2) When court-ordered mediation services are provided by a circuit court's mediation program, the following fees, unless otherwise established in the General Appropriations Act, shall be collected by the clerk of court:

(a) One-hundred twenty dollars per person per scheduled session in family mediation when the parties' combined income is greater than \$50,000, but less than \$100,000 per year;

(b) Sixty dollars per person per scheduled session in family mediation when the parties' combined income is less than \$50,000; or

(c) Sixty dollars per person per scheduled session in county court cases.

No mediation fees shall be assessed under this subsection in residential eviction cases, against a party found to be indigent, or for any small claims action. Fees collected by the clerk of court pursuant to this section shall be remitted to the Department of Revenue for deposit into the state courts' Mediation and Arbitration Trust Fund to fund court-ordered mediation. The clerk of court may deduct \$1 per fee assessment for processing this fee. The clerk of the court shall submit to the chief judge of the circuit and to the Office of the State Courts Administrator, no later than 30 days after the end of each quarter of the fiscal year, beginning July 1, 2008, a report specifying the amount of funds collected and remitted to the state courts' Mediation and Arbitration Trust Fund under this section and any other section during the previous quarter of the fiscal year. In addition to identifying the total aggregate collections and remissions from all statutory sources, the report must identify collections and remissions by each statutory source.

44.201. Citizen Dispute Settlement Centers; establishment; operation; confidentiality

(1) The chief judge of a judicial circuit, after consultation with the board of county commissioners of a county or with two or more boards of county commissioners of counties within the judicial circuit, may establish a Citizen Dispute Settlement Center for such county or counties, with the approval of the Chief Justice.

(2)(a) Each Citizen Dispute Settlement Center shall be administered in accordance with rules adopted by a council composed of at least seven members. The chief judge of the judicial circuit shall serve as chair of the council and shall appoint the other members of the council. The membership of the council shall include a representative of the state attorney, each sheriff, a county court judge, and each board of county commissioners within the geographical jurisdiction of the center. In addition, council membership shall include two members of the general public who are not representatives of such officers or boards. The membership of the council also may include other interested persons.

(b) The council shall establish qualifications for and appoint a director of the center. The director shall administer the operations of the center.

(c) A council may seek and accept contributions from counties and municipalities within the geographical jurisdiction of the Citizen Dispute Settlement Center and from agencies of the Federal Government, private sources, and other available funds and may expend such funds to carry out the purposes of this section.

(3) The Citizen Dispute Settlement Center, subject to the approval of the council and the Chief Justice, shall formulate and implement a plan for creating an informal forum for the mediation and settlement of disputes. Such plan shall prescribe:

(a) Objectives and purposes of the center;

(b) Procedures for filing complaints with the center and for scheduling informal mediation sessions with the parties to a complaint;

(c) Screening procedures to ensure that each dispute mediated by the center meets the criteria of fitness for mediation as set by the council;

(d) Procedures for rejecting any dispute which does not meet the established criteria of fitness for mediation;

(e) Procedures for giving notice of the time, place, and nature of the mediation session to the parties and for conducting mediation sessions;

(f) Procedures to ensure that participation by all parties is voluntary; and

(g) Procedures by which any dispute that was referred to the center by a law enforcement agency, state attorney, court, or other agency and that fails at mediation, or that reaches settlement that is later breached, is reported to the referring agency.

(4)(a) Each mediation session conducted by a Citizen Dispute Settlement Center shall be nonjudicial and informal. No adjudication, sanction, or penalty may be made or imposed by the mediator or the center.

(b) A Citizen Dispute Settlement Center may refer the parties to judicial or nonjudicial supportive service agencies.

(5) Any information relating to a dispute obtained by any person while performing any duties for the center from the files, reports, case summaries, mediator's notes, or other communications or materials is exempt from the provisions of s. 119.07(1).

(6) No officer, council member, employee, volunteer, or agent of a Citizen Dispute Settlement Center shall be held liable for civil damages for any act or omission in the scope of employment or function, unless such person acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of the rights, safety, or property of another.

(7) Any Citizen Dispute Settlement Center in operation on October 1, 1985, may continue its operations in its current form with the approval of the chief judge of the judicial circuit in which such center is located, except that paragraph (4)(b) and subsections (5) and (6) shall apply to such centers.

(8) Any utility regulated by the Florida Public Service Commission is excluded from the provisions of this act.

### **Mediation Confidentiality and Privilege Act**

#### 44.401. Mediation Confidentiality and Privilege Act

Sections 44.401-44.406 may be known by the popular name the "Mediation Confidentiality and Privilege Act."

#### 44.402. Scope

(1) Except as otherwise provided, ss. 44.401-44.406 apply to any mediation:

(a) Required by statute, court rule, agency rule or order, oral or written case-specific court order, or court administrative order;

(b) Conducted under ss. 44.401-44.406 by express agreement of the mediation parties; or

(c) Facilitated by a mediator certified by the Supreme Court, unless the mediation parties expressly agree not to be bound by ss. 44.401-44.406.

(2) Notwithstanding any other provision, the mediation parties may agree in writing that any or all of s. 44.405(1), s. 44.405(2), or s. 44.406 will not apply to all or part of a mediation proceeding.

#### 44.403. Mediation Confidentiality and Privilege Act; definitions

As used in ss. 44.401-44.406, the term:

(1) “Mediation communication” means an oral or written statement, or nonverbal conduct intended to make an assertion, by or to a mediation participant made during the course of a mediation, or prior to mediation if made in furtherance of a mediation. The commission of a crime during a mediation is not a mediation communication.

(2) “Mediation participant” means a mediation party or a person who attends a mediation in person or by telephone, videoconference, or other electronic means.

(3) “Mediation party” or “party” means a person participating directly, or through a designated representative, in a mediation and a person who:

(a) Is a named party;

(b) Is a real party in interest; or

(c) Would be a named party or real party in interest if an action relating to the subject matter of the mediation were brought in a court of law.

(4) “Mediator” means a neutral, impartial third person who facilitates the mediation process. The mediator's role is to reduce obstacles to communication, assist in identifying issues, explore alternatives, and otherwise facilitate voluntary agreements to resolve disputes, without prescribing what the resolution must be.

(5) “Subsequent proceeding” means an adjudicative process that follows a mediation, including related discovery.

#### 44.404. Mediation; duration

(1) A court-ordered mediation begins when an order is issued by the court and ends when:

(a) A partial or complete settlement agreement, intended to resolve the dispute and end the mediation, is signed by the parties and, if required by law, approved by the court;

- (b) The mediator declares an impasse by reporting to the court or the parties the lack of an agreement;
  - (c) The mediation is terminated by court order, court rule, or applicable law; or
  - (d) The mediation is terminated, after party compliance with the court order to appear at mediation, by:
    1. Agreement of the parties; or
    2. One party giving written notice to all other parties in a multiparty mediation that the one party is terminating its participation in the mediation. Under this circumstance, the termination is effective only for the withdrawing party.
- (2) In all other mediations, the mediation begins when the parties agree to mediate or as required by agency rule, agency order, or statute, whichever occurs earlier, and ends when:
- (a) A partial or complete settlement agreement, intended to resolve the dispute and end the mediation, is signed by the parties and, if required by law, approved by the court;
  - (b) The mediator declares an impasse to the parties;
  - (c) The mediation is terminated by court order, court rule, or applicable law; or
  - (d) The mediation is terminated by:
    1. Agreement of the parties; or
    2. One party giving notice to all other parties in a multiparty mediation that the one party is terminating its participation in the mediation. Under this circumstance, the termination is effective only for the withdrawing party.

44.405. Confidentiality; privilege; exceptions

- (1) Except as provided in this section, all mediation communications shall be confidential. A mediation participant shall not disclose a mediation communication to a person other than another mediation participant or a participant's counsel. A violation of this section may be remedied as provided by s. 44.406. If the mediation is court ordered, a violation of this section may also subject the mediation participant to sanctions by the court, including, but not limited to, costs, attorney's fees, and mediator's fees.
- (2) A mediation party has a privilege to refuse to testify and to prevent any other person from testifying in a subsequent proceeding regarding mediation communications.
- (3) If, in a mediation involving more than two parties, a party gives written notice to the other parties that the party is terminating its participation in the mediation, the party giving notice shall have a privilege to refuse to testify and to prevent any other person from testifying in a subsequent proceeding regarding only those mediation communications that occurred prior to the delivery of the written notice of termination of mediation to the other parties.

(4)(a) Notwithstanding subsections (1) and (2), there is no confidentiality or privilege attached to a signed written agreement reached during a mediation, unless the parties agree otherwise, or for any mediation communication:

1. For which the confidentiality or privilege against disclosure has been waived by all parties;
2. That is willfully used to plan a crime, commit or attempt to commit a crime, conceal ongoing criminal activity, or threaten violence;
3. That requires a mandatory report pursuant to chapter 39 or chapter 415 solely for the purpose of making the mandatory report to the entity requiring the report;
4. Offered to report, prove, or disprove professional malpractice occurring during the mediation, solely for the purpose of the professional malpractice proceeding;
5. Offered for the limited purpose of establishing or refuting legally recognized grounds for voiding or reforming a settlement agreement reached during a mediation; or
6. Offered to report, prove, or disprove professional misconduct occurring during the mediation, solely for the internal use of the body conducting the investigation of the conduct.

(b) A mediation communication disclosed under any provision of subparagraph (a)3., subparagraph (a)4., subparagraph (a)5., or subparagraph (a)6. remains confidential and is not discoverable or admissible for any other purpose, unless otherwise permitted by this section.

(5) Information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery by reason of its disclosure or use in mediation.

(6) A party that discloses or makes a representation about a privileged mediation communication waives that privilege, but only to the extent necessary for the other party to respond to the disclosure or representation.

#### 44.406. Confidentiality; civil remedies

(1) Any mediation participant who knowingly and willfully discloses a mediation communication in violation of s. 44.405 shall, upon application by any party to a court of competent jurisdiction, be subject to remedies, including:

- (a) Equitable relief.
- (b) Compensatory damages.
- (c) Attorney's fees, mediator's fees, and costs incurred in the mediation proceeding.
- (d) Reasonable attorney's fees and costs incurred in the application for remedies under this section.

(2) Notwithstanding any other law, an application for relief filed under this section may not be commenced later than 2 years after the date on which the party had a reasonable opportunity to

discover the breach of confidentiality, but in no case more than 4 years after the date of the breach.

(3) A mediation participant shall not be subject to a civil action under this section for lawful compliance with the provisions of s. 119.07.

## **Florida Rules for Certified and Court-Appointed Mediators**

*Current with Amendments received through September 2008*

### **Part I. Mediator Qualifications**

#### Rule 10.100. Certification Requirements

(a) General. For certification as a county court, family, circuit court or dependency mediator, a mediator must be at least 21 years of age, be of good moral character, and have the required number of points for the type of certification sought as specifically required in rule 10.105.

(b) County Court Mediators. For initial certification as a mediator of county court matters, an applicant must have at least a high school diploma or a General Equivalency Diploma (GED) and 100 points, which shall include:

(1) 30 points for successful completion of a Florida Supreme Court certified county court mediation training program;

(2) 10 points for education; and

(3) 60 points for mentorship.

(c) Family Mediators. For initial certification as a mediator of family and dissolution of marriage issues, an applicant must have at least a bachelor's degree and 100 points, which shall include, at a minimum:

(1) 30 points for successful completion of a Florida Supreme Court certified family mediation training program;

(2) 25 points for education/mediation experience; and

(3) 30 points for mentorship.

Additional points above the minimum requirements may be awarded for completion of additional education/mediation experience, mentorship, and miscellaneous activities.

(d) Circuit Court Mediators. For initial certification as a mediator of circuit court matters, other than family matters, an applicant must have at least a bachelor's degree and 100 points, which shall include, at a minimum:

(1) 30 points for successful completion of a Florida Supreme Court certified circuit mediation training

program;

(2) 25 points for education/mediation experience; and

(3) 30 points for mentorship.

Additional points above the minimum requirements may be awarded for completion of additional education/mediation experience, mentorship, and miscellaneous activities.

(e) Dependency Mediators. For initial certification as a mediator of dependency matters, as defined in Florida Rule of Juvenile Procedure 8.290, an applicant must have at least a bachelor's degree and 100 points, which shall include, at a minimum:

(1) 30 points for successful completion of a Florida Supreme Court certified dependency mediation training program;

(2) 25 points for education/mediation experience; and

(3) 40 points for mentorship.

Additional points above the minimum requirements may be awarded for completion of additional education/mediation experience, mentorship, and miscellaneous activities.

(f) Senior Judges Serving as Mediators. A senior judge may serve as a mediator in a court-ordered mediation only if certified by the Florida Supreme Court as a mediator for that type of mediation.

(g) Referral for Discipline. If the certification or licensure necessary for any person to be certified as a family or circuit mediator is suspended or revoked, or if the mediator holding such certification or licensure is in any other manner disciplined, such matter shall be referred to the Mediator Qualifications Board for appropriate action pursuant to rule 10.800.

(h) Special Conditions. Mediators who are certified prior to August 1, 2006, shall not be subject to the point requirements for any category of certification in relation to which continuing certification is maintained.

#### Rule 10.105. Point System Categories

(a) Education. Points shall be awarded in accordance with the following schedule (points are only awarded for the highest level of education completed and honorary degrees are not included):

High School Diploma/GED	10 points
Associate's Degree	15 points
Bachelor's Degree	20 points
Master's Degree	25 points
Master's Degree in Conflict Resolution	30 points
Doctorate (e.g., Ph.D., J.D., M.D., Ed.D., LL.M.)	30 points
Ph.D. from Accredited Conflict Resolution Program	40 points

An additional five points will be awarded for completion of a graduate level conflict resolution certificate program in an institution which has been accredited by Middle States Association of Colleges and Schools, the New England Association of Schools and Colleges, the North Central Association of Colleges and Schools, the Northwest Association of Schools and Colleges, the Southern Association of Colleges and Schools, the Western Association of Schools and Colleges, the American Bar Association, or an entity of equal status.

(b) Mediation Experience. One point per year will be awarded to a Florida Supreme Court certified mediator for each year that mediator has mediated at least 15 cases of any type. In the alternative, a maximum of five points will be awarded to any mediator, regardless of Florida Supreme Court certification, who has conducted a minimum of 100 mediations over a consecutive five-year period.

(c) Mentorship. Ten points will be awarded for each supervised mediation completed of the type for which certification is sought and five points will be awarded for each mediation session of the type for which certification is sought which is observed.

(d) Miscellaneous Points.

1. Five points shall be awarded to applicants currently licensed or certified in any United States jurisdiction in psychology, accounting, social work, mental health, health care, education or the practice of law or mediation. Such award shall not exceed a total of five points regardless of the number of licenses or certifications obtained.

2. Five points shall be awarded for possessing conversational ability in a foreign language as demonstrated by certification by the American Council on the Teaching of Foreign Languages (ACTFL) Oral Proficiency Test, qualification as a court interpreter, accreditation by the American Translators Association, or approval as a sign language interpreter by the Registry of Interpreters for the Deaf. Such award shall not exceed a total of five points regardless of the number of languages in which the applicant is proficient.

3. Five points shall be awarded for the successful completion of a mediation training program (minimum 30 hours in length) which is certified or approved by a jurisdiction other than Florida and which may not be the required Florida Supreme Court certified mediation training program. Such award shall not exceed five points regardless of the number of training programs completed.

4. Five points shall be awarded for certification as a mediator by the Florida Supreme Court. Such award shall not exceed five points per category regardless of the number of training programs completed or certifications obtained.

#### Rule 10.110. Good Moral Character

(a) General Requirement. No person shall be certified by this Court as a mediator unless such person first produces satisfactory evidence of good moral character as required by rule 10.100.

(b) Purpose. The primary purpose of the requirement of good moral character is to ensure protection of the participants in mediation and the public, as well as to safeguard the justice system. A mediator shall have, as a prerequisite to certification and as a requirement for continuing certification, the good

moral character sufficient to meet all of the Mediator Standards of Professional Conduct set out in rules 10.200-10.690.

(c) Certification. The following shall apply in relation to determining the good moral character required for initial and continuing mediator certification:

(1) The applicant's or mediator's good moral character may be subject to inquiry when the applicant's or mediator's conduct is relevant to the qualifications of a mediator.

(2) An applicant for initial certification who has been convicted of a felony shall not be eligible for certification until such person has received a restoration of civil rights.

(3) An applicant for initial certification who is serving a sentence of felony probation shall not be eligible for certification until termination of the period of probation.

(4) In assessing whether the applicant's or mediator's conduct demonstrates a present lack of good moral character the following factors shall be relevant:

(A) the extent to which the conduct would interfere with a mediator's duties and responsibilities;

(B) the area of mediation in which certification is sought or held;

(C) the factors underlying the conduct;

(D) the applicant's or mediator's age at the time of the conduct;

(E) the recency of the conduct;

(F) the reliability of the information concerning the conduct;

(G) the seriousness of the conduct as it relates to mediator qualifications;

(H) the cumulative effect of the conduct or information;

(I) any evidence of rehabilitation;

(J) the applicant's or mediator's candor; and

(K) denial of application, disbarment, or suspension from any profession.

(d) Decertification. A certified mediator shall be subject to decertification for any knowing and willful incorrect material information contained in any mediator application. There is a presumption of knowing and willful violation if the application is completed, signed, and notarized.

#### Rule 10.120. Notice of Change of Address or Name.

(a) Address Change. Whenever any certified mediator changes residence or mailing address, that person must within 30 days thereafter notify the center of such change.

(b) Name Change. Whenever any certified mediator changes legal name, that person must within 30 days thereafter notify the center of such change.

#### Rule 10.130. Notification of Conviction

(a) Definition. "Conviction" means a determination of guilt resulting from a plea to a felony or misdemeanor of the first degree, regardless of whether adjudication was withheld or whether imposition of sentence was suspended. All Florida, federal, out-of-state, military, and foreign convictions as an adult or violations of county ordinances that bring within the municipal or county code the violation of a state statute or statutes shall qualify as convictions.

(b) Report of Conviction. A conviction shall be reported in writing to the center within 30 days of such

conviction. A report of conviction shall include a copy of the order or orders pursuant to which the conviction was entered.

(c) Suspension. Upon receipt of a report of felony conviction, the center shall immediately suspend all certifications and refer the matter to the qualifications complaint committee.

(d) Referral. Upon receipt of a report of a misdemeanor conviction, the center shall refer the matter to the qualifications complaint committee for appropriate action. If the center becomes aware of a conviction prior to the required notification, it shall refer the matter to the qualifications complaint committee for appropriate action.

## **Part II. Standards of Professional Conduct**

### Rule 10.200. Scope and Purpose

These Rules provide ethical standards of conduct for certified and court-appointed mediators. They are intended to both guide mediators in the performance of their services and instill public confidence in the mediation process. The public's use, understanding, and satisfaction with mediation can only be achieved if mediators embrace the highest ethical principles. Whether the parties involved in a mediation choose to resolve their dispute is secondary in importance to whether the mediator conducts the mediation in accordance with these ethical standards.

### Rule 10.210. Mediation Defined

Mediation is a process whereby a neutral and impartial third person acts to encourage and facilitate the resolution of a dispute without prescribing what it should be. It is an informal and non-adversarial process intended to help disputing parties reach a mutually acceptable agreement.

### Rule 10.220. Mediator's Role

The role of the mediator is to reduce obstacles to communication, assist in the identification of issues and exploration of alternatives, and otherwise facilitate voluntary agreements resolving the dispute. The ultimate decision-making authority, however, rests solely with the parties.

### Rule 10.230. Mediation Concepts

Mediation is based on concepts of communication, negotiation, facilitation, and problem-solving that emphasize:

- (a) self determination;
- (b) the needs and interests of the parties;
- (c) fairness;
- (d) procedural flexibility;
- (e) confidentiality; and
- (f) full disclosure.

#### Rule 10.300. Mediator's Responsibility to the Parties

The purpose of mediation is to provide a forum for consensual dispute resolution by the parties. It is not an adjudicatory procedure. Accordingly, a mediator's responsibility to the parties includes honoring their right of self-determination; acting with impartiality; and avoiding coercion, improper influence, and conflicts of interest. A mediator is also responsible for maintaining an appropriate demeanor, preserving confidentiality, and promoting the awareness by the parties of the interests of non-participating persons. A mediator's business practices should reflect fairness, integrity and impartiality.

#### Rule 10.310. Self-Determination

(a) Decision-Making. Decisions made during a mediation are to be made by the parties. A mediator shall not make substantive decisions for any party. A mediator is responsible for assisting the parties in reaching informed and voluntary decisions while protecting their right of self-determination.

(b) Coercion Prohibited. A mediator shall not coerce or improperly influence any party to make a decision or unwillingly participate in a mediation.

(c) Misrepresentation Prohibited. A mediator shall not intentionally or knowingly misrepresent any material fact or circumstance in the course of conducting a mediation.

(d) Postponement or Cancellation. If, for any reason, a party is unable to freely exercise self-determination, a mediator shall cancel or postpone a mediation.

#### Rule 10.320. Nonparticipating Persons

A mediator shall promote awareness by the parties of the interests of persons affected by actual or potential agreements who are not represented at mediation.

#### Rule 10.330. Impartiality

(a) Generally. A mediator shall maintain impartiality throughout the mediation process. Impartiality means freedom from favoritism or bias in word, action, or appearance, and includes a commitment to assist all parties, as opposed to any one individual.

(b) Withdrawal for Partiality. A mediator shall withdraw from mediation if the mediator is no longer impartial.

(c) Gifts and Solicitation. A mediator shall neither give nor accept a gift, favor, loan, or other item of value in any mediation process. During the mediation process, a mediator shall not solicit or otherwise attempt to procure future professional services.

#### Rule 10.340. Conflicts of Interest

(a) Generally. A mediator shall not mediate a matter that presents a clear or undisclosed conflict of interest. A conflict of interest arises when any relationship between the mediator and the mediation participants or the subject matter of the dispute compromises or appears to compromise the mediator's impartiality.

(b) Burden of Disclosure. The burden of disclosure of any potential conflict of interest rests on the

mediator. Disclosure shall be made as soon as practical after the mediator becomes aware of the interest or relationship giving rise to the potential conflict of interest.

(c) Effect of Disclosure. After appropriate disclosure, the mediator may serve if all parties agree. However, if a conflict of interest clearly impairs a mediator's impartiality, the mediator shall withdraw regardless of the express agreement of the parties.

(d) Conflict During Mediation. A mediator shall not create a conflict of interest during the mediation. During a mediation, a mediator shall not provide any services that are not directly related to the mediation process.

(e) Senior Judge. If a mediator who is a senior judge has presided over a case involving any party, attorney, or law firm in the mediation, the mediator shall disclose such fact prior to mediation. A mediator shall not serve as a mediator in any case in which the mediator is currently presiding as a senior judge. Absent express consent of the parties, a mediator shall not serve as a senior judge over any case involving any party, attorney, or law firm that is utilizing or has utilized the judge as a mediator within the previous three years. A senior judge who provides mediation services shall not preside over the same type of case the judge mediates in the circuit where the mediation services are provided; however, a senior judge may preside over other types of cases (e.g., criminal, juvenile, family law, probate) in the same circuit and may preside over cases in circuits in which the judge does not provide mediation services.

#### Rule 10.350. Demeanor

A mediator shall be patient, dignified, and courteous during the mediation process.

#### Rule 10.360. Confidentiality

(a) Scope. A mediator shall maintain confidentiality of all information revealed during mediation except where disclosure is required or permitted by law or is agreed to by all parties.

(b) Caucus. Information obtained during caucus may not be revealed by the mediator to any other mediation participant without the consent of the disclosing party.

(c) Record Keeping. A mediator shall maintain confidentiality in the storage and disposal of records and shall not disclose any identifying information when materials are used for research, training, or statistical compilations.

#### Rule 10.370. Advice, Opinions, or Information

(a) Providing Information. Consistent with standards of impartiality and preserving party self-determination, a mediator may provide information that the mediator is qualified by training or experience to provide.

(b) Independent Legal Advice. When a mediator believes a party does not understand or appreciate how an agreement may adversely affect legal rights or obligations, the mediator shall advise the party of the right to seek independent legal counsel.

(c) Personal or Professional Opinion. A mediator shall not offer a personal or professional opinion

intended to coerce the parties, unduly influence the parties, decide the dispute, or direct a resolution of any issue. Consistent with standards of impartiality and preserving party self-determination however, a mediator may point out possible outcomes of the case and discuss the merits of a claim or defense. A mediator shall not offer a personal or professional opinion as to how the court in which the case has been filed will resolve the dispute.

#### Rule 10.380. Fees and Expenses

(a) Generally. A mediator holds a position of trust. Fees charged for mediation services shall be reasonable and consistent with the nature of the case.

(b) Guiding Principles in Determining Fees. A mediator shall be guided by the following general principles in determining fees:

(1) Any charges for mediation services based on time shall not exceed actual time spent or allocated.

(2) Charges for costs shall be for those actually incurred.

(3) All fees and costs shall be appropriately divided between the parties.

(4) When time or expenses involve two or more mediations on the same day or trip, the time and expense charges shall be prorated appropriately.

(c) Written Explanation of Fees. A mediator shall give the parties or their counsel a written explanation of any fees and costs prior to mediation. The explanation shall include:

(1) the basis for and amount of any charges for services to be rendered, including minimum fees and travel time;

(2) the amount charged for the postponement or cancellation of mediation sessions and the circumstances under which such charges will be assessed or waived;

(3) the basis and amount of charges for any other items; and

(4) the parties' pro rata share of mediation fees and costs if previously determined by the court or agreed to by the parties.

(d) Maintenance of Records. A mediator shall maintain records necessary to support charges for services and expenses and upon request shall make an accounting to the parties, their counsel, or the court.

(e) Remuneration for Referrals. No commissions, rebates, or similar remuneration shall be given or received by a mediator for a mediation referral.

(f) Contingency Fees Prohibited. A mediator shall not charge a contingent fee or base a fee on the outcome of the process.

#### Rule 10.400. Mediator's Responsibility to the Mediation Process

A mediator is responsible for safeguarding the mediation process. The benefits of the process are best achieved if the mediation is conducted in an informed, balanced and timely fashion. A mediator is responsible for confirming that mediation is an appropriate dispute resolution process under the circumstances of each case.

#### Rule 10.410. Balanced Process

A mediator shall conduct mediation sessions in an even-handed, balanced manner. A mediator shall promote mutual respect among the mediation participants throughout the mediation process and encourage the participants to conduct themselves in a collaborative, non-coercive, and non-adversarial

manner.

#### Rule 10.420. Conduct of Mediation

(a) Orientation Session. Upon commencement of the mediation session, a mediator shall describe the mediation process and the role of the mediator, and shall inform the mediation participants that:

- (1) mediation is a consensual process;
- (2) the mediator is an impartial facilitator without authority to impose a resolution or adjudicate any aspect of the dispute; and
- (3) communications made during the process are confidential, except where disclosure is required or permitted by law.

(b) Adjournment or Termination. A mediator shall:

- (1) adjourn the mediation upon agreement of the parties;
- (2) adjourn or terminate any mediation which, if continued, would result in unreasonable emotional or monetary costs to the parties;
- (3) adjourn or terminate the mediation if the mediator believes the case is unsuitable for mediation or any party is unable or unwilling to participate meaningfully in the process;
- (4) terminate a mediation entailing fraud, duress, the absence of bargaining ability, or unconscionability; and
- (5) terminate any mediation if the physical safety of any person is endangered by the continuation of mediation.

(c) Closure. The mediator shall cause the terms of any agreement reached to be memorialized appropriately and discuss with the parties and counsel the process for formalization and implementation of the agreement.

#### Rule 10.430. Scheduling Mediation

A mediator shall schedule a mediation in a manner that provides adequate time for the parties to fully exercise their right of self-determination. A mediator shall perform mediation services in a timely fashion, avoiding delays whenever possible.

#### Rule 10.500. Mediator's Responsibility to the Courts

A mediator is accountable to the referring court with ultimate authority over the case. Any interaction discharging this responsibility, however, shall be conducted in a manner consistent with these ethical rules.

#### Rule 10.510. Information to the Court

A mediator shall be candid, accurate, and fully responsive to the court concerning the mediator's qualifications, availability, and other administrative matters.

#### Rule 10.520. Compliance with Authority

A mediator shall comply with all statutes, court rules, local court rules, and administrative orders relevant to the practice of mediation.

#### Rule 10.530. Improper Influence

A mediator shall refrain from any activity that has the appearance of improperly influencing a court to secure an appointment to a case.

Rule 10.600. Mediator's Responsibility to The Mediation Profession

A mediator shall preserve the quality of the profession. A mediator is responsible for maintaining professional competence and forthright business practices, fostering good relationships, assisting new mediators, and generally supporting the advancement of mediation.

Rule 10.610. Advertising

A mediator shall not engage in marketing practices which contain false or misleading information. A mediator shall ensure that any advertisements of the mediator's qualifications, services to be rendered, or the mediation process are accurate and honest. A mediator shall not make claims of achieving specific outcomes or promises implying favoritism for the purpose of obtaining business.

Rule 10.620. Integrity and Impartiality

A mediator shall not accept any engagement, provide any service, or perform any act that would compromise the mediator's integrity or impartiality.

Rule 10.630. Professional Competence

A mediator shall acquire and maintain professional competence in mediation. A mediator shall regularly participate in educational activities promoting professional growth.

Rule 10.640. Skill and Experience

A mediator shall decline an appointment, withdraw, or request appropriate assistance when the facts and circumstances of the case are beyond the mediator's skill or experience.

Rule 10.650. Concurrent Standards

Other ethical standards to which a mediator may be professionally bound are not abrogated by these rules. In the course of performing mediation services, however, these rules prevail over any conflicting ethical standards to which a mediator may otherwise be bound.

Rule 10.660. Relationships with Other Mediators

A mediator shall respect the professional relationships of another mediator.

Rule 10.670. Relationship with Other Professionals

A mediator shall respect the roles of other professional disciplines in the mediation process and shall promote cooperation between mediators and other professionals.

Rule 10.680. Prohibited Agreements

With the exception of an agreement conferring benefits upon retirement, a mediator shall not restrict or limit another mediator's practice following termination of a professional relationship.

Rule 10.690. Advancement of Mediation

(a) Pro Bono Service. Mediators have a responsibility to provide competent services to persons seeking their assistance, including those unable to pay for services. A mediator should provide mediation services pro bono or at a reduced rate of compensation whenever appropriate.

(b) New Mediator Training. An experienced mediator should cooperate in training new mediators, including serving as a mentor.

(c) Support of Mediation. A mediator should support the advancement of mediation by encouraging and participating in research, evaluation, or other forms of professional development and public education.

**Administrative Mediation**  
Fla. Admin. Code Ann. r. 28-106

*Current with rules included through December 2008*

28-106.401. Purpose.

This rule applies to all mediation proceedings conducted pursuant to Section 120.573, F.S.

(1) Mediation is a process whereby a third person acts to encourage and facilitate a resolution of an administrative dispute, without prescribing what the resolution should be. Mediation is an informal and nonadversarial process with the objective of helping the parties reach a mutually acceptable agreement.

(2) Mediation proceedings are available to settle administrative disputes if provided for in the announcement of agency actions. If an agreement to mediation by the agency and all parties is filed within 10 days of the announcement for election of an administrative remedy under Sections 120.569 and 120.57, F.S., the time limitations shall be tolled until the completion of the mediation with settlement or impasse.

28-106.402. Contents of Request for Mediation.

The request for mediation shall contain:

- (1) The name, address, and telephone number of the party requesting mediation and that party's representative, if any;
- (2) A statement of the preliminary agency action.

28-106.403. Allocation of Costs and Fees.

The costs of mediation, including the mediator's fees and other shared costs, shall be split equally or as otherwise agreed by the parties. The cost allocation shall be specified in the agreement to mediate. Mediators shall be compensated at a rate agreed upon by the parties and the mediator.

28-106.404. Contents of Agreement to Mediate.

The agreement to mediate shall set forth:

- (1) The names, addresses, and telephone numbers of any persons who may attend the mediation;
- (2) The name, address, and telephone number of the mediator agreed to by the parties;

- (3) How the costs and fees associated with mediation will be allocated;
- (4) The agreement of the parties regarding the confidentiality of discussions and documents introduced during mediation to the extent authorized by law;
- (5) The date, time, and place of the first mediation session;
- (6) The name of the party's representative who shall have authority to settle or recommend settlement; and
- (7) The signatures of the parties.

28-106.405. Standards of Conduct for Mediators.

- (1) Mediators shall adhere to the highest standards of integrity, impartiality, and professional competence.
- (2) On commencement of the mediation session, a mediator shall inform all parties that the process is consensual in nature, that the mediator is an impartial facilitator, and that the mediator may not impose or force any settlement on the parties.
- (3) A mediator shall:
  - (a) Perform the mediation services in a timely and expeditious fashion, avoiding delays wherever possible;
  - (b) Be impartial and advise all parties of any circumstances bearing on possible bias, prejudice, or impartiality; and
  - (c) Withdraw from mediation if the mediator believes the mediator can no longer be impartial.
- (4) A mediator shall not:
  - (a) Coerce or unfairly influence a party into a settlement agreement and shall not make substantive decisions for any party to a mediation process;
  - (b) Intentionally or knowingly misrepresent material facts or circumstances in the course of conducting a mediation; or
  - (c) Give or accept a gift, request, favor, loan, or any other item of value to or from a party, attorney, or any other person involved in, or associated with any person involved in, the mediation process.

28-106.501. Emergency Action.

- (1) If the agency finds that immediate serious danger to the public health, safety, or welfare requires emergency action, the agency shall enter an emergency order summarily suspending, limiting, or restricting a license, or taking such other emergency action as is authorized by law.

(2) The agency's emergency order shall include a notice of the licensee's (or person or entity subject to the agency's jurisdiction) right to an immediate appeal of the emergency final order pursuant to Section 120.569(2)(n) or 120.60(6), F.S.

(3) In the case of the emergency suspension, limitation, or restriction of a license, unless otherwise provided by law, within 20 days after emergency action taken pursuant to subsection (1) of this rule, the agency shall initiate administrative proceedings in compliance with Sections 120.569, 120.57 and 120.60, F.S., and Rule 28-106.2015, F.A.C.

28-106.601. Conflict.

Following receipt of a recommended order, the agency attorney or qualified representative who acts on behalf of the agency in the conduct of the hearing will not serve as legal advisor to the agency head during subsequent proceedings which result in the issuance of the final order.