#### NAVIGATING THE NEW FLORIDA APPELLATE MEDIATION RULES

Appellate Practice Section

Chairs: Duane A. Daiker, Shumaker, Loop & Kendrick, LLP, and Marie A. Borland, Hill Ward Henderson



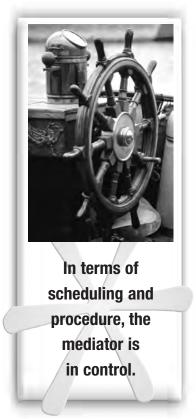
lorida's new appellate mediation rules, adopted in July 2010, present several stumbling blocks for the unwary practitioner. Thus, a close reading of the rules should be undertaken before filing a motion to refer a case to mediation. Importantly, the rules differ procedurally from both the state trial court and Eleventh Circuit mediation programs.

All courts sitting in an appellate capacity may refer cases to mediation *sua sponte* or on motion "at any time." While a motion can be made at any time, Rule 9.700(d) is notably ambiguous about the tolling effect of a motion for mediation. Ordinarily, Rule

9.300(c) provides that the service of any motion (save a few exceptions, which do not. include motions for mediation) tolls all court deadlines. Rule 9.700(d), however, provides that a motion for mediation "shall toll all deadlines" until ruled uponbut only if "filed by a party within 30 days of the notice of appeal." Given this ambiguity, a practitioner filing a motion after the 30-day period should also consider filing a

motion for enlargement of time, to toll the applicable deadlines.

Within ten days of referral, the parties may file a stipulation designating an agreed-upon mediator. The mediator, however, must be an appellate-certified



mediator, which narrows the choices for selecting a qualified mediator.<sup>5</sup> Absent a stipulation from the parties, the court will select the mediator.<sup>6</sup>

The first mediation "shall be commenced within 45 days of referral"—unless the parties agree otherwise or the court modifies the time period.7 Once the first mediation conference has occurred, however, mediation "shall be completed within 30 days"—unless the court modifies

the time period.8

The "party or its representative having full authority to settle without further consultation," the "trial or appellate counsel of

Continued on page 15





# **ASK-A-LAWYER VOLUNTEERS**

- Mike Blickensderfer
- Joe Town
- Rinky Parwani
- Larry Samaha
- Mike Fluke
- Denny Morgenstern
- Tom Hyde

- Anissa Morris
- Bill Schwarz
- David Thorpe
- David Veenstra
- A.J Musial
- Brent Rose
- Betsey Herd



If you would like to volunteer for these programs, please contact Cathy at 221-7783 or email cathy@hillsbar.com

#### Continued from page 14

record," and a "representative of the insurance carrier" must be present at mediation.<sup>9</sup> In terms of scheduling and procedure, the mediator is in control.<sup>10</sup>

Parties may also move to dispense with mediation if the referral violates Rule 9.710 by involving a matter forbidden for mediation or for other good cause, but only within ten days after discovering the facts that support the motion.<sup>11</sup>

Finally, unlike Eleventh Circuit mediation, parties need not prepare a Civil Appeal Statement, 12 deadlines are automatically tolled or modified by the court rather than the mediator, 13 and parties may select only an appellate-

certified mediator rather than any registered mediator. 14

Carefully used, these mediation rules can hopefully facilitate resolution of cases on appeal. 15

- <sup>1</sup> Fla. R. App. P. 9.700-.740.
- <sup>2</sup> See In re Amendments, 41 So. 3d 161, 161 (Fla. 2010).
  - <sup>3</sup> Fla. R. App. P. 9.700(a), (b).
  - 4 Id. 9.730(a).
- <sup>5</sup> For a list of appellate-certified mediators, see Florida State Courts ADR, http://www.flcourts.org/gen\_public/adr/index.shtml (last visited April 18, 2011).
  - <sup>6</sup> Fla. R. App. P. 9.730(a).
  - 7 Id. 9.700(c).
  - <sup>8</sup> *Id*.
  - <sup>9</sup> Id. 9.720(a)(1)-(2).
- <sup>10</sup> See id. 9.720(c) ("mediator shall set the initial conference date"); id.

9.720(d) ("mediator shall at all times be in control of the procedures to be followed in the mediation").

- 11 Id. 9.700(e).
- 12 11th Cir. R. 33-1(a).
- 13 Id. 33-1(e).
- 14 Id. 33-1(g).
- <sup>15</sup> See Jeanette Bellon & Sharon C.



Degnan, The Appeal of Appellate Mediation: Making the Case for an Attractive Dispute Resolution Tool, Fla. B.J., Mar. 2009 at 32.



Authors: Kimberly Mello and Thomas Burns, Greenberg Traurig, P.A.

# MEDIATION & ARBITRATION DALAN, KATZ & SIEGEL, P.L.

# Attorneys at Law

# Rick Dalan:

- Board Certified Civil Trial Lawyer
- · Certified Circuit Civil Court Mediator
- · Certified Federal Court Mediator
- · AV Rated

#### Jeffrey M. Katz:

- · LLM in Taxation
- · Certified Circuit Civil Court Mediator
- AV Rated

### **Mediation Services for:**

- Personal Injury Litigation
- Coverage Litigation
- Medical Malpractice
- · Wrongful Death
- · Products Liability
- Construction Litigation
- Commercial Litigation
- Discrimination Claims
- First Party Insurance Claims

## Experienced in:

- Insurance Defense
- · Plaintiff Personal Injury
- · Civil Litigation
- Premises Liability
- Coverage Litigation
- · Products Liability
- Wrongful Death
- UM Claims
- Auto Negligence

Free Wireless Internet Access

2633 McCormick Drive, Suite 101, Clearwater, Florida 33759

www.dalan-katz.com

Phone: (727) 796-1000 or (800) 538-4173

Facsimile: (727) 797-2200