

NAVIGATING THE NEW FLORIDA APPELLATE MEDIATION RULES

Appellate Practice Section

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Florida's new appellate mediation rules, adopted in July 2010, present several stumbling blocks for the unwary practitioner.¹ 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.²

All courts sitting in an appellate capacity may refer cases to mediation *sua sponte* or on motion "at any time."³ 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 upon—but 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.⁴ The mediator, however, must be an *appellate-certified*



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

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

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record,” and a “representative of the insurance carrier” must be present at mediation.⁹ In terms of scheduling and procedure, the mediator is in control.¹⁰

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.¹¹

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

¹ Fla. R. App. P. 9.700-.740.

² See *In re Amendments*, 41 So. 3d 161, 161 (Fla. 2010).

³ Fla. R. App. P. 9.700(a), (b).

⁴ *Id.* 9.730(a).

⁵ 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).

⁶ Fla. R. App. P. 9.730(a).

⁷ *Id.* 9.700(c).

⁸ *Id.*

⁹ *Id.* 9.720(a)(1)-(2).

¹⁰ 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).

¹⁵ 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.



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