

# FLORIDA – MIDDLE

*December 1, 2009*

## **RULE 8.01 ARBITRATION**

(a) It is the purpose of the Court, through adoption and implementation of this rule, to provide an alternative mechanism for the resolution of civil disputes in accord with 28 U.S.C. Sections 651-658.

(b) The Chief Judge shall certify those persons who are eligible and qualified to serve as arbitrators under this rule. An individual may be certified to serve as an arbitrator under this rule if admitted to The Florida Bar for at least five (5) years, admitted to practice before this Court, and determined by the Chief Judge competent to perform the duties of an arbitrator.

An advisory committee or committees comprised of members of the bar in each Division of the Court, respectively, may be constituted to assist the Chief Judge in screening applicants and aiding in the formulation and application of standards for selecting arbitrators.

(c) Each individual certified as an arbitrator shall take the oath or affirmation prescribed by 28 U.S.C. Section 453 before serving as an arbitrator. Depending upon the availability of funds from the Administrative Office of the United States Courts, or other appropriate agency, arbitrators may be compensated for their services in such amounts and in such manner as the Chief Judge shall specify from time to time. No arbitrator shall charge or accept for services any fee or reimbursement from any other source. Any member of the bar who is certified and designated as an arbitrator pursuant to these rules shall not for that reason be disqualified from appearing and acting as counsel in any other case pending before the Court.

## **RULE 8.02 CASES FOR ARBITRATION**

(a) Any civil action may be referred to arbitration in accordance with this rule if the parties consent in writing to arbitration, except that referral to arbitration may not occur if:

- (1) the action is based on an alleged violation of a right secured by the Constitution of the United States;
- (2) jurisdiction is based in whole or in part on 28 U.S.C. Section 1343; or
- (3) the relief sought consists of money damages in an amount greater than \$150,000.

(b) No party or attorney can be prejudiced for refusing to participate in arbitration by consent.

## **RULE 8.03 REFERRAL TO ARBITRATION**

Within twenty-one (21) days after referral to arbitration, the Court shall select three (3)

certified arbitrators to conduct the arbitration proceedings. Not more than one member or associate of a firm or association of attorneys shall be appointed to the same panel of arbitrators. Any person selected as an arbitrator may be disqualified for bias or prejudice as provided in 28 U.S.C. Section 144, and shall disqualify himself in any action in which he would be required to do so if he were a justice, judge, or magistrate judge governed by 28 U.S.C. Section 455.

#### **RULE 8.04 ARBITRATION HEARING**

(a) Immediately upon selection and designation of the arbitrators pursuant to Rule 8.03, the Clerk shall communicate with the parties and the arbitrators in an effort to ascertain a mutually convenient date for a hearing, and shall then schedule and give notice of the date and time of the arbitration hearing which may be held in space provided in the United States Courthouse. The hearing shall be scheduled within ninety (90) days from the date of the selection and designation of the arbitrators on at least twenty-one (21) days notice to the parties. Any continuance of the hearing beyond that ninety (90) day period may be allowed only by order of the Court for good cause shown.

(b) At least fourteen (14) days prior to the arbitration hearing each party shall furnish to every other party a list of witnesses, if any, and copies (or photographs) of all exhibits to be offered at the hearing. The arbitrators may refuse to consider any witness or exhibit which has not been so disclosed.

(c) Individual parties or authorized representatives of corporate parties shall attend the arbitration hearing unless excused in advance by the arbitrators for good cause shown. The hearing shall be conducted informally; the Federal Rules of Evidence shall be a guide, but shall not be binding. It is contemplated by the Court that the presentation of testimony shall be kept to a minimum, and that cases shall be presented to the arbitrators primarily through the statements and arguments of counsel.

(d) Any party may have a recording and transcript made of the arbitration hearing at the party's expense.

#### **RULE 8.05 ARBITRATION AWARD AND JUDGMENT**

(a) The award of the arbitrators shall be filed with the Clerk within fourteen (14) days following the hearing, and the Clerk shall give immediate notice to the parties. The award shall state the result reached by the arbitrators without necessity of factual findings or legal conclusions. A majority determination shall control the award.

(b) At the end of thirty (30) days after the filing of the arbitrator's award the Clerk shall enter judgment on the award if no timely demand for trial *de novo* has been made. If the parties have previously stipulated in writing that the award shall be final and binding, the Clerk shall enter judgment on the award when filed.

(c) Pursuant to 28 U.S.C. Section 657(b), the contents of any arbitration award shall be sealed and shall remain unknown to any judge assigned to the case --

(1) Except as necessary for the Court to determine whether to assess costs or attorney fees under 28 U.S.C. Section 655 or

(2) Until the District Court has entered final judgment in the action or the action has been otherwise terminated, at which time the award shall be unsealed.

#### **RULE 8.06 TRIAL DE NOVO**

(a) Within thirty (30) days after the filing of the arbitration award with the Clerk, any party may demand a trial *de novo* in the District Court. Written notification of such a demand shall be filed with the Clerk and a copy shall be served by the moving party upon all other parties.

(b) Upon a demand for a trial *de novo* the action shall be placed on the calendar of the Court and treated for all purposes as if it had not been referred to arbitration, and any right of trial by jury shall be preserved inviolate.

(c) At the trial *de novo* the Court shall not admit evidence that there has been an arbitration proceeding, the nature or amount of the award, or any other matter concerning the conduct of the arbitration proceeding, except that testimony given at an arbitration hearing may be used for any purpose otherwise permitted by the Federal Rules of Evidence, or the Federal Rules of Civil Procedure.

(d) No penalty for demanding a trial *de novo* shall be assessed by the Court.

#### **RULE 8.06 TRIAL DE NOVO**

(a) Within thirty (30) days after the filing of the arbitration award with the Clerk, any party may demand a trial *de novo* in the District Court. Written notification of such a demand shall be filed with the Clerk and a copy shall be served by the moving party upon all other parties.

(b) Upon a demand for a trial *de novo* the action shall be placed on the calendar of the Court and treated for all purposes as if it had not been referred to arbitration, and any right of trial by jury shall be preserved inviolate.

(c) At the trial *de novo* the Court shall not admit evidence that there has been an arbitration proceeding, the nature or amount of the award, or any other matter concerning the conduct of the arbitration proceeding, except that testimony given at an arbitration hearing may be used for any purpose otherwise permitted by the Federal Rules of Evidence, or the Federal Rules of Civil Procedure.

(d) No penalty for demanding a trial *de novo* shall be assessed by the Court.

### **COURT ANNEXED MEDIATION**

#### **RULE 9.01 GENERAL PROVISIONS**

(a) **Definitions:** Mediation is a supervised settlement conference presided over by a qualified, certified and neutral mediator to promote conciliation, compromise and the ultimate settlement of a civil action.

The mediator is an attorney, certified by the chief judge in accordance with these rules, who possesses the unique skills required to facilitate the mediation process including the ability to suggest alternatives, analyze issues, question perceptions, use logic, conduct private caucuses, stimulate negotiations between opposing sides and keep order.

The mediation process does not allow for testimony of witnesses. The mediator does not review or rule upon questions of fact or law, or render any final decision in the case. Absent a settlement, the mediator will report only to the presiding judge as to whether the case settled, was adjourned for further mediation (by agreement of the parties), or that the mediator declared an impasse.

(b) **Purpose:** It is the purpose of the Court, through adoption and implementation of this rule, to provide an alternative mechanism for the resolution of civil disputes (a Court annexed, mandatory mediation procedure) leading to disposition before trial of many civil cases with resultant savings in time and costs to the litigants and to the Court, but without sacrificing the quality of justice to be rendered or the right of the litigants to a full trial in the event of an impasse following mediation.

#### **RULE 9.02 CERTIFICATION; QUALIFICATION AND COMPENSATION OF MEDIATORS**

(a) **Certification of Mediators:** The chief judge shall certify those persons who are eligible and qualified to serve as mediators under this rule, in such numbers as the chief judge shall deem appropriate. Thereafter, the chief judge shall have complete discretion and authority to withdraw the certification of any mediator at any time.

(b) **Lists of Certified Mediators:** Lists of certified mediators shall be maintained in each division of the Court, and shall be made available to counsel and the public upon request.

(c) **Qualifications of Mediators:** An individual may be certified to serve as a mediator if:

(1) He or she is a former state court judge who presided in a court of general jurisdiction and was also a member of the bar in the state in which he presided; or

(2) He or she is a retired federal judicial officer; or

(3) He or she has been a member of a state bar or the bar of the District of Columbia for at least ten (10) years and is currently admitted to the Bar of this Court.

In addition, an applicant for certification must have completed a minimum of 40 hours in the Florida Circuit Court Mediation Training Course certified by the Florida Supreme Court and be found competent by the chief judge to perform mediation duties.

At the direction of the chief judge, an advisory committee may be constituted to assist in formulating policy and additional standards relating to the qualification of mediators and to assist in reviewing applications of prospective mediators.

(d) **Oath Required:** Every mediator shall take the oath or affirmation prescribed by 28 U.S.C. Section 453 upon qualifying as a mediator.

(e) **Disqualification of a Mediator:** Any person selected as a mediator may be disqualified for bias or prejudice as provided in 28 U.S.C. Section 144, and shall be disqualified in any case in which such action would be required by a justice, judge, or magistrate judge governed by 28 U.S.C. Section 455.

(f) **Compensation of Mediators:** Absent agreement of the parties and the mediator, mediators shall be compensated at a reasonable hourly rate provided by order of the Court after consideration of the amount in controversy, the nature of the dispute, the resources of the parties, the prevailing market rate for mediators in the applicable market, the skill and experience of the mediator, and other pertinent factors. Unless altered by order of the Court, the cost of the mediator's services shall be borne equally by the parties to the mediation conference.

(g) **Limitations on Acceptance of Compensation or Other Reimbursement:** Except as provided by these rules, no mediator shall charge or accept in connection with the mediation of any particular case, any fee or thing of value from any other source whatever, absent written approval of the Court given in advance of the receipt of any such payment or thing of value.

(h) **Mediators as Counsel in Other Cases:** Any member of the bar who is certified and designated as a mediator pursuant to these rules shall not for that reason be disqualified from appearing and acting as counsel in any other case pending before the Court.

### **RULE 9.03 TYPES OF CASES SUBJECT TO MEDIATION; WITHDRAWAL**

(a) **Court Referral:** Upon order by the presiding judge, any civil action or claim may be referred by the Court to a mediation conference, providing the action or claim has not already been arbitrated in accordance with Chapter Eight of the Rules of the Middle District of Florida, except:

- (1) Appeals from rulings of administrative agencies.
- (2) Habeas corpus and/or extraordinary writs.
- (3) Forfeitures of seized property.
- (4) Bankruptcy appeals.

(b) **Stipulation of Counsel:** Any action or claim may be referred to a mediation conference upon the stipulation of counsel of record. Such application shall also certify agreement to pay the mediator's fee in accordance with these rules.

(c) **Withdrawal from Mediation:** Any civil action or claim referred to mediation

pursuant to this rule may be exempt or withdrawn from mediation by the presiding judge at any time, before or after reference, upon a determination for any reason that the case is not suitable for mediation.

#### **RULE 9.04 PROCEDURES TO REFER A CASE OR CLAIM TO MEDIATION**

(a) **Order of Referral:** In every case in which the Court determines that referral to mediation is appropriate pursuant to Rule 9.03(a) or (b), the Court shall enter an order of referral which shall:

(1) Designate the mediator if one has previously been selected by the parties or, if not, allow fourteen (14) days for the parties to make such selection and notify the Court.

(2) Define the window of time in which the mediation conference may be conducted, preferably not sooner than 45 days and not later than fourteen (14) days before the scheduled trial date.

(3) Designate an attorney as lead counsel, who shall be responsible for coordinating two alternate mediation conference dates agreeable to the mediator and all counsel of record.

#### **RULE 9.05 SCHEDULING THE MEDIATION CONFERENCE**

(a) **Report of Lead Counsel:** Not later than twenty-one (21) days after the entry of the order of referral pursuant to Rule 9.04(a), lead counsel shall file a report indicating the agreeable alternate mediation conference dates.

(b) **Scheduling Mediation Conference Date:** Upon receipt of the report of lead counsel, or upon failure of lead counsel to either file the report or secure mutually agreeable mediation conference dates, the Court shall fix the date for the mediation conference by order. Unless otherwise provided by order, the mediation conference shall be conducted in the United States Courthouse.

(c) **Party Attendance Required:** Unless otherwise excused by the presiding judge in writing, all parties, corporate representatives, and any other required claims professionals (insurance adjusters, etc.), shall be present at the Mediation Conference with full authority to negotiate a settlement. Failure to comply with the attendance or settlement authority requirements may subject a party to sanctions by the Court.

(d) **Continuance of Mediation Conference Date:** Subject to the availability of mediation conference space in the Courthouse, the mediator may, with the consent of all parties and counsel, reschedule the mediation conference to a date certain not later than fourteen (14) days prior to the scheduled trial date. Any continuance beyond that time must be approved by the presiding judge.

(e) **Mediation Absent Party Attendance:** Subject to approval of the mediator, the mediation conference may proceed in the absence of a party who, after due notice, fails to be present. Upon the recommendation of the mediator, sanctions may be imposed by the Court on

any party who, absent good cause shown, failed to attend the mediation conference.

#### **RULE 9.06 MEDIATION REPORT; NOTICE OF SETTLEMENT; JUDGMENT**

(a) **Mediation Report:** Within seven (7) days following the conclusion of the mediation conference, the mediator shall file a Mediation Report indicating whether all required parties were present and had authority to settle the case. The report shall also indicate whether the case settled, was continued with the consent of the parties, or whether the mediator was forced to declare an impasse.

(b) **Notice of Settlement:** In the event that the parties reach an agreement to settle the case or claim, lead counsel shall promptly notify the Court of the settlement in accordance with Local Rule 3.08, and the Clerk shall enter judgment accordingly.

#### **RULE 9.07 TRIAL DE NOVO**

(a) **Trial De Novo Upon Impasse:** If the mediation conference ends in an impasse, the case will be tried as originally scheduled.

(b) **Restrictions on the Use of Information Derived During the Mediation Conference:** All proceedings of the mediation conference, including statements made by any party, attorney, or other participant, are privileged in all respects. The proceedings may not be reported, recorded, placed into evidence, made known to the trial court or jury, or construed for any purpose as an admission against interest. A party is not bound by anything said or done at the conference, unless a settlement is reached.

### **CHAPTER NINE COURT ANNEXED MEDIATION**

#### **RULE 9.01 GENERAL PROVISIONS**

(a) **Definitions:** Mediation is a supervised settlement conference presided over by a qualified, certified and neutral mediator to promote conciliation, compromise and the ultimate settlement of a civil action.

The mediator is an attorney, certified by the chief judge in accordance with these rules, who possesses the unique skills required to facilitate the mediation process including the ability to suggest alternatives, analyze issues, question perceptions, use logic, conduct private caucuses, stimulate negotiations between opposing sides and keep order.

The mediation process does not allow for testimony of witnesses. The mediator does not review or rule upon questions of fact or law, or render any final decision in the case. Absent a settlement, the mediator will report only to the presiding judge as to whether the case settled, was adjourned for further mediation (by agreement of the parties), or that the mediator declared an impasse.

(b) **Purpose:** It is the purpose of the Court, through adoption and implementation of this rule, to provide an alternative mechanism for the resolution of civil disputes (a Court annexed, mandatory mediation procedure) leading to disposition before trial of many civil cases with resultant savings in time and costs to the litigants and to the Court, but without sacrificing the quality of justice to be rendered or the right of the litigants to a full trial in the event of an impasse following mediation.

## **RULE 9.02 CERTIFICATION; QUALIFICATION AND COMPENSATION OF MEDIATORS**

(a) **Certification of Mediators:** The chief judge shall certify those persons who are eligible and qualified to serve as mediators under this rule, in such numbers as the chief judge shall deem appropriate. Thereafter, the chief judge shall have complete discretion and authority to withdraw the certification of any mediator at any time.

(b) **Lists of Certified Mediators:** Lists of certified mediators shall be maintained in each division of the Court, and shall be made available to counsel and the public upon request.

(c) **Qualifications of Mediators:** An individual may be certified to serve as a mediator if:

- (1) He or she is a former state court judge who presided in a court of general jurisdiction and was also a member of the bar in the state in which he presided; or
- (2) He or she is a retired federal judicial officer; or
- (3) He or she has been a member of a state bar or the bar of the District of Columbia for at least ten (10) years and is currently admitted to the Bar of this Court.

In addition, an applicant for certification must have completed a minimum of 40 hours in the Florida Circuit Court Mediation Training Course certified by the Florida Supreme Court and be found competent by the chief judge to perform mediation duties.

At the direction of the chief judge, an advisory committee may be constituted to assist in formulating policy and additional standards relating to the qualification of mediators and to assist in reviewing applications of prospective mediators.

(d) **Oath Required:** Every mediator shall take the oath or affirmation prescribed by 28 U.S.C. Section 453 upon qualifying as a mediator.

(e) **Disqualification of a Mediator:** Any person selected as a mediator may be disqualified for bias or prejudice as provided in 28 U.S.C. Section 144, and shall be disqualified in any case in which such action would be required by a justice, judge, or magistrate judge governed by 28 U.S.C. Section 455.



(f) **Compensation of Mediators:** Absent agreement of the parties and the mediator, mediators shall be compensated at a reasonable hourly rate provided by order of the Court after consideration of the amount in controversy, the nature of the dispute, the resources of the parties, the prevailing market rate for mediators in the applicable market, the skill and experience of the mediator, and other pertinent factors. Unless altered by order of the Court, the cost of the mediator's services shall be borne equally by the parties to the mediation conference.

(g) **Limitations on Acceptance of Compensation or Other Reimbursement:** Except as provided by these rules, no mediator shall charge or accept in connection with the mediation of any particular case, any fee or thing of value from any other source whatever, absent written approval of the Court given in advance of the receipt of any such payment or thing of value.

(h) **Mediators as Counsel in Other Cases:** Any member of the bar who is certified and designated as a mediator pursuant to these rules shall not for that reason be disqualified from appearing and acting as counsel in any other case pending before the Court.

#### **RULE 9.03 TYPES OF CASES SUBJECT TO MEDIATION; WITHDRAWAL**

(a) **Court Referral:** Upon order by the presiding judge, any civil action or claim may be referred by the Court to a mediation conference, providing the action or claim has not already been arbitrated in accordance with Chapter Eight of the Rules of the Middle District of Florida, except:

- (1) Appeals from rulings of administrative agencies.
- (2) Habeas corpus and/or extraordinary writs.
- (3) Forfeitures of seized property.
- (4) Bankruptcy appeals.

(b) **Stipulation of Counsel:** Any action or claim may be referred to a mediation conference upon the stipulation of counsel of record. Such application shall also certify agreement to pay the mediator's fee in accordance with these rules.

(c) **Withdrawal from Mediation:** Any civil action or claim referred to mediation pursuant to this rule may be exempt or withdrawn from mediation by the presiding judge at any time, before or after reference, upon a determination for any reason that the case is not suitable for mediation.

#### **RULE 9.04 PROCEDURES TO REFER A CASE OR CLAIM TO MEDIATION**

(a) **Order of Referral:** In every case in which the Court determines that referral to mediation is appropriate pursuant to Rule 9.03(a) or (b), the Court shall enter an order of referral which shall:

- (1) Designate the mediator if one has previously been selected by the parties or, if not, allow fourteen (14) days for the parties to make such selection and

notify the Court.

(2) Define the window of time in which the mediation conference may be conducted, preferably not sooner than 45 days and not later than fourteen (14) days before the scheduled trial date.

(3) Designate an attorney as lead counsel, who shall be responsible for coordinating two alternate mediation conference dates agreeable to the mediator and all counsel of record.

## **RULE 9.05 SCHEDULING THE MEDIATION CONFERENCE**

(a) **Report of Lead Counsel:** Not later than twenty-one (21) days after the entry of the order of referral pursuant to Rule 9.04(a), lead counsel shall file a report indicating the agreeable alternate mediation conference dates.

(b) **Scheduling Mediation Conference Date:** Upon receipt of the report of lead counsel, or upon failure of lead counsel to either file the report or secure mutually agreeable mediation conference dates, the Court shall fix the date for the mediation conference by order. Unless otherwise provided by order, the mediation conference shall be conducted in the United States Courthouse.

(c) **Party Attendance Required:** Unless otherwise excused by the presiding judge in writing, all parties, corporate representatives, and any other required claims professionals (insurance adjusters, etc.), shall be present at the Mediation Conference with full authority to negotiate a settlement. Failure to comply with the attendance or settlement authority requirements may subject a party to sanctions by the Court.

(d) **Continuance of Mediation Conference Date:** Subject to the availability of mediation conference space in the Courthouse, the mediator may, with the consent of all parties and counsel, reschedule the mediation conference to a date certain not later than fourteen (14) days prior to the scheduled trial date. Any continuance beyond that time must be approved by the presiding judge.

(e) **Mediation Absent Party Attendance:** Subject to approval of the mediator, the mediation conference may proceed in the absence of a party who, after due notice, fails to be present. Upon the recommendation of the mediator, sanctions may be imposed by the Court on any party who, absent good cause shown, failed to attend the mediation conference.

## **RULE 9.06 MEDIATION REPORT; NOTICE OF SETTLEMENT; JUDGMENT**

(a) **Mediation Report:** Within seven (7) days following the conclusion of the mediation conference, the mediator shall file a Mediation Report indicating whether all required parties were present and had authority to settle the case. The report shall also indicate whether the case settled, was continued with the consent of the parties, or whether the mediator was forced to declare an impasse.

(b) **Notice of Settlement:** In the event that the parties reach an agreement to settle the case or claim, lead counsel shall promptly notify the Court of the settlement in accordance with Local Rule 3.08, and the Clerk shall enter judgment accordingly.

#### **RULE 9.07 TRIAL DE NOVO**

(a) **Trial De Novo Upon Impasse:** If the mediation conference ends in an impasse, the case will be tried as originally scheduled.

(b) **Restrictions on the Use of Information Derived During the Mediation Conference:** All proceedings of the mediation conference, including statements made by any party, attorney, or other participant, are privileged in all respects. The proceedings may not be reported, recorded, placed into evidence, made known to the trial court or jury, or construed for any purpose as an admission against interest. A party is not bound by anything said or done at the conference, unless a settlement is reached.