

**Rules of Court Procedure for ADR– Select References
See Supreme Court Opinions 21-990 and 22-01
Language in Track Changes is Effective October 1, 2022**

Florida Rules of Civil Procedure

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. The order of referral or written stipulation may provide for mediation or arbitration to be conducted in person, through the use of communication technology as that term is defined in Florida Rule of General Practice and Judicial Administration 2.530, or by a combination thereof. Absent direction in the order of referral, mediation or arbitration must be conducted in person, unless the parties stipulate or the court, on its own motion or on motion by a party, otherwise orders that the proceeding be conducted by communication technology or by a combination of communication technology and in-person participation.~~
- (1) Conference or Hearing Date. Unless otherwise ordered by the court, the first mediation conference or arbitration hearing ~~shall~~must 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, ~~must~~shall notify the parties in writing of the date, the time, and, as applicable, the place of the conference or hearing and the instructions for access to communication technology that will be used for the conference or hearing, unless the order of referral, other order of the court, or written stipulation specifies ~~the date, time, and place~~ this information.

No changes (b) – (d)

Rule 1.720 Mediation Procedures

- (a) No changes.
- (b) Appearance at Mediation. ~~Unless otherwise permitted by court order or stipulated by the parties in writing, a~~ A party is deemed to appear at a mediation conference if the following persons are physically present or, if authorized under rule 1.700(a), participating through the use of communication technology:
- (1) – (3) No changes.
- (c) No changes.

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- (d) Appearance by Public Entity. If a party to mediation is a public entity required to operate in compliance with chapter 286, Florida Statutes, that party ~~shall be~~ deemed to appear at a mediation conference by the ~~physical~~ presence 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. Such representative may be physically present or, if authorized under rule 1.700(a), may participate through the use of communication technology.
- (e) Certification of Authority. Unless otherwise stipulated by the parties, each party, 10 days prior to appearing at a mediation conference, ~~shall~~must file with the court and serve all parties a written notice identifying the person or persons who will ~~be attending~~appear at the mediation conference as a party representative or as an insurance carrier representative, and confirming that those persons have the authority required by subdivision (b).
- (f) - (k) No changes.

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~~must be reduced to writing and signed by the parties and their counsel, if any. Signatures may be original, electronic, or facsimile and may be in counterparts. The agreement ~~shall~~must be filed when required by law or with the parties' consent. A report of the agreement ~~shall~~must be submitted to the court or a stipulation of dismissal ~~shall~~will 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~~must report the existence of the signed or transcribed agreement to the court without comment within 10 days thereof. No partial or final agreement under this rule ~~shall~~may be reported to the court except as provided herein.
- (c) Enforceability. The parties may not object to the enforceability of an agreement on the ground that communication technology was used for participation in the mediation conference if such use was authorized under rule 1.700(a).
- ~~(e)~~ (d) 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, attorney fees, ___ or other appropriate remedies including entry of judgment on the agreement.

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Committee Notes

1996 Amendment. Subdivision(b) is amended to provide for partial settlements, to clarify the procedure for concluding mediation by report or stipulation of dismissal, and to specify the procedure for reporting mediated agreements to the court. The reporting requirements are intended to ensure the confidentiality provided for in section 44.102(3), Florida Statutes, and to prevent premature notification to the court.

Rule 1.750 County Court Actions

No changes (a) - (d).

(e) Appearance at Mediation. In small claims actions, an attorney may appear on behalf of a party at mediation provided that the attorney has full authority to settle without further consultation. Unless otherwise ordered by the court, a nonlawyer representative may appear on behalf of a party to a small claims mediation if the representative has the party's signed written authority to appear and has full authority to settle without further consultation. In either event, the party need not appear in person. In any other county court action, a party will be deemed to appear if the persons set forth in rule 1.720(b) are physically present or, if authorized under rule 1.700(a), participating through the use of communication technology.

(f) Agreement. Any agreements reached as a result of small claims mediation ~~shall~~must be written in the form of a stipulation. The stipulation may be entered as an order of the court. Signatures for the stipulation may be original, electronic, or facsimile and may be in counterparts.

Florida Small Claims Rule 7.090 Select References

(a) Appearance. On the date and time appointed in the summons/notice to appear, the plaintiff and defendant ~~shall~~must appear personally or by counsel, subject to subdivision (b). Such appearance may be in person or through the use of communication technology under Florida Rule of General Practice and Judicial Administration 2.530.

(f) Appearance at Mediation; Sanctions. In small claims actions, an attorney may appear on behalf of a party at mediation if the attorney has full authority to settle without further consultation. Unless otherwise ordered by the court, a nonlawyer representative may appear on behalf of a party to a small claims mediation if the representative has the party's signed written authority to appear and has full authority to settle without further consultation. In either event, the party need not appear ~~in person~~. Mediation may take place at the pretrial conference. Whoever appears for a party must have full authority to settle. Appearance at the mediation may be in person or, if authorized by the court or by written stipulation of the parties, through the use of communication technology as that term is defined in Florida Rule of General Practice and Judicial Administration 2.530.

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Failure to comply with this subdivision may result in the imposition of costs and attorney fees incurred by the opposing party.

- (g) Agreement. Any agreements reached as a result of small claims mediation ~~shall~~must be written in the form of a stipulation. The stipulation may be entered as an order of the court. Signatures for the stipulation may be original, electronic, or facsimile and may be in counterparts.

Committee Notes

2008 Amendment. The requirement that an attorney attending mediation on behalf of the client have full authority to settle should not be equated to a requirement to settle where one or more parties wants to proceed to trial.

Florida Rules of Juvenile Procedure - Rule 8.290

Rule 8.290 Dependency Mediation

(a) - (c) No changes.

- (d) Referral. Except as provided by this rule, all matters and issues described in subdivision (a)(1) may be referred to mediation. All referrals to mediation shall be in written form, shall advise the parties of their right to counsel, ~~and~~ set a date for hearing before the court to review the progress of the mediation, and may provide that mediation be conducted in person, by communication technology, or a combination thereof. Absent direction in the referral, mediation must be conducted in person, unless the parties stipulate or the court, on its own motion or on motion by a party, otherwise orders that the proceedings be conducted by communication technology or by a combination of communication technology and in-person technology. The mediator or mediation program shall be appointed by the court or stipulated to by the parties. If the court refers the matter to mediation, the mediation order shall address all applicable provisions of this rule. The mediation order shall be served on all parties and on counsel under the provisions of the Florida Rules of Juvenile Procedure.

(e) – (k) No changes.

(l) Appearances

- (1) Order naming or prohibiting attendance of parties. The court shall enter an order naming the parties and the participants who must appear at the mediation and any parties or participants who are prohibited from appearing at~~attending~~ the mediation. Additional participants may be included by court order or by mutual agreement of all parties. The order may provide for mediation to be conducted in person, by communication technology, or a combination thereof.

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(2) ~~Physical p~~Presence of adult parties and participants. Unless otherwise agreed to by the parties or ordered by the court, any party or participant ordered to mediation must be ~~physically~~ present at the mediation conference either in person or, if permitted by court order or written stipulation of the parties, via communication technology. Persons representing an agency, department, or program must have full authority to enter into an agreement that shall be binding on that agency, department, or program. In the discretion of the mediator, and with the agreement of the attending parties, dependency mediation may proceed in the absence of any party or participant ordered to mediation.

(3) - (5) No changes.

(m) - (n) No changes.

(o) Report on Mediation.

(1) If agreement is reached on all or part of any matter or issue, including legal or factual issues to be determined by the court, the agreement must be immediately reduced to writing, signed by the attending parties, and promptly submitted to the court by the mediator with copies to all parties and counsel. Signatures may be original, electronic, or facsimile, and may be in counterparts.

(2) No change.

(p) - (q) No changes.

Florida Rules of Appellate Procedure - Rules 9.700 – 9.740

Rule 9.700 Mediation Rules

(a) No change.

(b) Referral. The court, upon its own motion or upon motion of a party, may refer a case to mediation at any time and may direct that the mediation be conducted in person, through the use of communication technology as the term is defined in the Florida Rule of General Practice and Judicial Administration 2.530, or by a combination thereof. ~~Such A~~ motion from a party ~~shall~~must contain a certification that the movant has consulted with opposing counsel or unrepresented party and that the movant is authorized to represent with respect to the mediation, and, if applicable, with respect to the movant’s request to use communication technology that opposing counsel or unrepresented party:

- (1) has no objection;
- (2) objects and cites that specific reasons for objections; or
- (3) will promptly file an objection.

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Absent direction in the court’s order of referral, mediation must be conducted in person, unless the parties stipulate or the court, on its own motion or on motion by a party, otherwise orders that the proceedings be conducted by communication technology or by a combination of communication technology and in-person participation.

(c) - (e) No change.

Rule 9.720 Mediation Procedures

(a) Appearance. If a party to mediation is a public entity required to conduct its business pursuant to chapter 286, Florida Statutes, that party ~~shall be is~~ 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 changed by order of the court,~~ a party is deemed to appear at a mediation conference if by the presence of the following persons ~~are physically present or appear electronically upon agreement of the parties:~~

- (1) The party or its representative having full authority to settle without further consultation.
- (2) The party’s trial or appellate counsel of record, if any. If a party has more than one counsel, the appearance of only one counsel is required.
- (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 without further consultation.

As used in this subdivision, the term “presence” means physical presence at the mediation conference or participation using communication technology if authorized under rule 9.700(b).

(b) - (f) No changes.

(g) Certificate of Authority. Unless otherwise stipulated by the parties, each party, 10 days prior to appearing at a mediation conference, ~~shall~~must file with the court and serve upon all parties a written notice identifying the person or persons who will ~~be attending appear at~~ the mediation conference as a party representative or as an insurance carrier representative, and confirming that those persons have the authority required by this rule.

Committee Note

2014 Amendment. The amendment adding subdivisions (f) and (g) is intended to make this rule consistent with the November 2011 amendments to Florida Rule of Civil Procedure 1.720.

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Rule 9.740 Completion of Mediation

(a) No change.

(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. Signatures may be original, electronic, or facsimile and may be in counterparts. Within 10 days thereafter, the mediator shall file a report with the court on a form approved by the court.

(c) Enforceability. The parties may not object to the enforceability of an agreement on the ground that communication technology was used for participation in the mediation conference if such use was authorized under rule 9.700(b).

Florida Family Law Rules of Procedure

Rule 12.740 Family Mediation

(a) No change.

(b) Referral. Except as provided by law and this rule, all contested family matters and issues may be referred to mediation. Every effort ~~shall~~must be made to expedite mediation of family issues. Such referral, or written stipulation of the parties, may provide for mediation or arbitration in person, remotely via audio or audio-video communication technology, or a combination thereof. Absent direction in the order of referral, a mediation or arbitration must be conducted in person, unless the parties stipulate to the court, on it's own motion or on motion by a party, otherwise orders that the proceeding to be conducted by communication technology or by a combination of communication technology and in-person participation.

(c) No change.

(d) Appearances. ~~Unless otherwise stipulated by the parties, a~~A party is deemed to appear ~~at a family mediation convened pursuant to this rule~~ if the named party is physically present at the mediation conference, or if permitted by court order or written stipulation of the parties, present via communication technology. In the discretion of the mediator and with the agreement of the parties, family mediation may proceed in the absence of counsel unless otherwise ordered by the court.

(e) No change.

(f) Report on Mediation.

(1) If agreement is reached as to any matter or issue, including legal or factual issues to be determined by the court, the agreement shall be reduced to writing, signed by

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the parties ~~and their counsel, if any and if present~~, and submitted to the court unless the parties agree otherwise. By stipulation of the parties, the agreement may be electronically or stenographically recorded and made under oath or affirmed. In such event, an appropriately signed transcript may be filed with the court. Signatures may be original, electronic, or facsimile, and may be in counterparts.

(2) – (3) No changes.

Commentary

1995 Adoption. This rule is similar to former Florida Rule of Civil Procedure 1.740. All provisions concerning the compensation of the mediator have been incorporated into this rule so that all mediator compensation provisions are contained in one rule. Additionally, this rule clarifies language regarding the filing of transcripts, the mediator’s responsibility for mailing a copy of the agreement to counsel, and counsel’s filing of written objections to mediation agreements.

2022 Amendments. The phrase “audio or audio-video communication technology” is added to the rule to make the rule consistent with amendments to the Rules of General Practice and Judicial Administration.