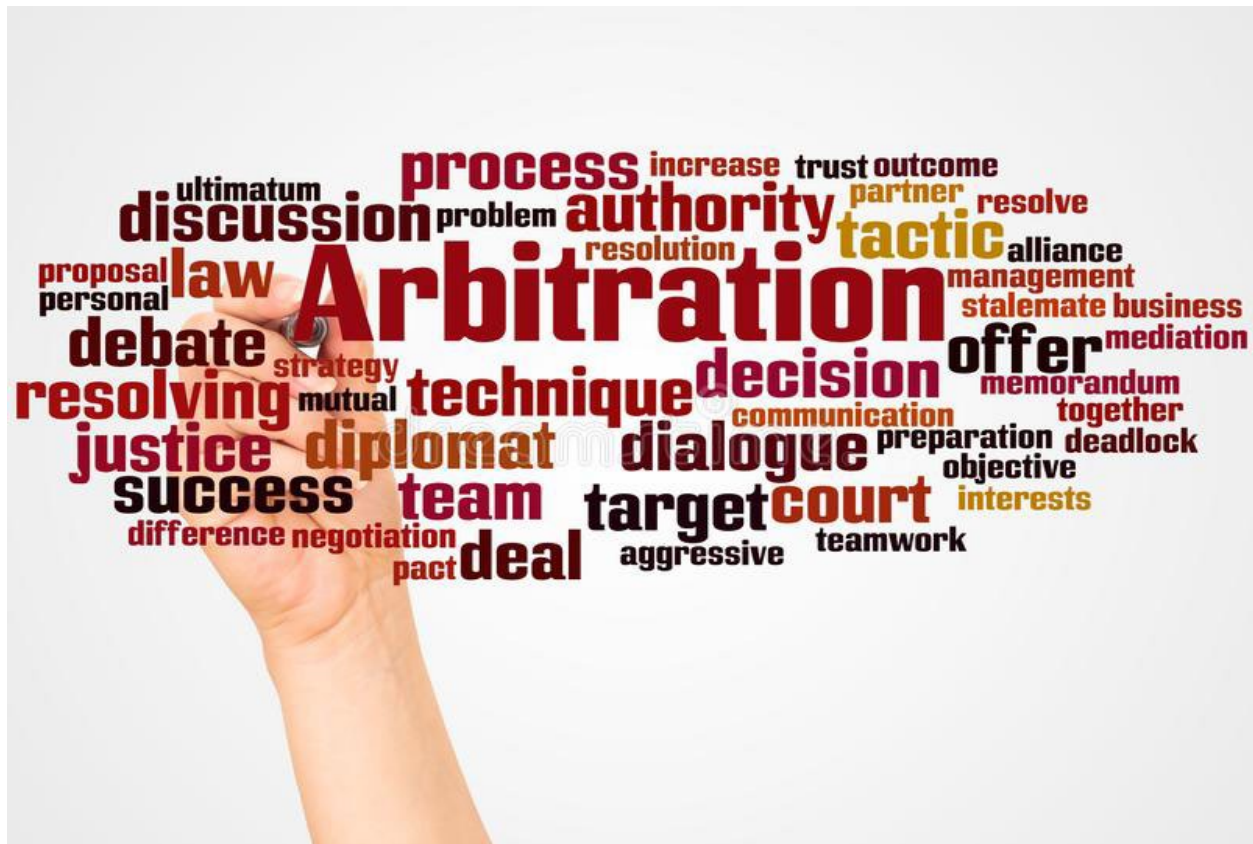


# Arbitrator's Almanac

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Office of the State Courts Administrator

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# **Arbitrator's Almanac**

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# **An Overview of Non-Binding Arbitration in Florida’s Trial Courts**

## **Authorities:**

Chapter 44, Mediation Alternatives to Judicial Action, Florida Statutes

- § 44.104(14), Fla. Stat., defines voluntary binding arbitration and voluntary trial resolution and includes the prohibition: *“This section shall not apply to any dispute involving child custody, visitation, or child support ... .”*

Florida Rules of Civil Procedure 1.700 and 1.800 – 1.820

- Rule 1.810(a) requires the chief judge of the circuit or a designee shall maintain a list of qualified persons who have agreed to serve as arbitrators.

Florida Rules for Court-Appointed Arbitrators 11.010 – 11.130

- These rules contain the qualifications, training requirements, ethical standards, and disciplinary process.

## **Training:**

The four-hour Florida Supreme Court approved arbitration training is offered by several training providers.

The Dispute Resolution Center maintains a list of all arbitration training attendees as a courtesy resource for circuits and attendees. It is not a list of Qualified Arbitrators and is best used to confirm someone has taken training. It is available upon request at [drcmail@flcourts.gov](mailto:drcmail@flcourts.gov)

## **Qualified Arbitrators:**

The Dispute Resolution Center does not certify, qualify, or discipline arbitrators. Qualification and discipline are functions of the trial courts. There is no statewide certification of arbitrators.

# Florida Statutes on Arbitration – Chapters 44 and 682

## Chapter 44 – Mediation Alternatives to Judicial Action

### 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. 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 are 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,

## Florida Statutes on Arbitration – Chapters 44 and 682

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 post arbitration 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

## Florida Statutes on Arbitration – Chapters 44 and 682

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

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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**

(1) 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.

(2) An applicant for certification as a mediator shall undergo a security background investigation, which includes, but is not limited to, submitting a full set of fingerprints to the Department of Law Enforcement or to a vendor, entity, or agency authorized by s. 943.053. The vendor, entity, or agency shall forward the fingerprints to the department for state processing, and the department shall forward the fingerprints to the Federal Bureau of Investigation for national processing. Any vendor fee and state and federal processing fees shall be borne by the applicant. For records provided to a person or entity other than those excepted therein, the cost for state fingerprint processing is the fee authorized in s. 943.053(3)(e).

### **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

## Florida Statutes on Arbitration – Chapters 44 and 682

- (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 Revenue 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 involving an amount in controversy not exceeding \$15,000.

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 Revenue 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, a report specifying the amount of funds collected and remitted to the State Courts Revenue 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.

# Florida Statutes on Arbitration – Chapters 44 and 682

## Chapter 682 - Arbitration Code

### **682.011 Definitions. —As used in this chapter, the term:**

- (1) “Arbitration organization” means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator.
- (2) “Arbitrator” means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.
- (3) “Court” means a court of competent jurisdiction in this state.
- (4) “Knowledge” means actual knowledge.
- (5) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.
- (6) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

### **682.012 Notice**

- (1) Except as otherwise provided in this chapter, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.
- (2) A person has notice if the person has knowledge of the notice or has received notice.
- (3) A person receives notice when it comes to the person’s attention or the notice is delivered at the person’s place of residence or place of business, or at another location held out by the person as a place of delivery of such communications.

### **682.013 Applicability of revised code**

- (1) The Revised Florida Arbitration Code governs an agreement to arbitrate made on or after July 1, 2013.
- (2) Until June 30, 2016, the Revised Florida Arbitration Code governs an agreement to arbitrate made before July 1, 2013, if all the parties to the agreement or to the arbitration proceeding so agree in a record. Otherwise, such agreements shall be governed by the applicable law existing at the time the parties entered into the agreement.

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(3) The Revised Florida Arbitration Code does not affect an action or proceeding commenced or right accrued before July 1, 2013.

(4) Beginning July 1, 2016, an agreement to arbitrate shall be subject to the Revised Florida Arbitration Code.

### **682.014 Effect of agreement to arbitrate; nonwaivable provisions**

(1) Except as otherwise provided in subsections (2) and (3), a party to an agreement to arbitrate or to an arbitration proceeding may waive, or the parties may vary the effect of, the requirements of this chapter to the extent permitted by law.

(2) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

(a) Waive or agree to vary the effect of the requirements of:

1. Commencing a petition for judicial relief under s. 682.015(1);
2. Making agreements to arbitrate valid, enforceable, and irrevocable under s. 682.02(1);
3. Permitting provisional remedies under s. 682.031;
4. Conferring authority on arbitrators to issue subpoenas and permit depositions under s. 682.08(1) or (2);
5. Conferring jurisdiction under s. 682.181; or
6. Stating the bases for appeal under s. 682.20;

(b) Agree to unreasonably restrict the right under s. 682.032 to notice of the initiation of an arbitration proceeding;

(c) Agree to unreasonably restrict the right under s. 682.041 to disclosure of any facts by a neutral arbitrator; or

(d) Waive the right under s. 682.07 of a party to an agreement to arbitrate to be represented by an attorney at any proceeding or hearing under this chapter, but an employer and a labor organization may waive the right to representation by an attorney in a labor arbitration.

(3) A party to an agreement to arbitrate or arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements in this section or:

- (a) The applicability of this chapter, the Revised Florida Arbitration Code, under s. 682.013(1) or (4);
- (b) The availability of proceedings to compel or stay arbitration under s. 682.03;

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- (c) The immunity conferred on arbitrators and arbitration organizations under s. 682.051;
- (d) A party's right to seek judicial enforcement of an arbitration preaward ruling under s. 682.081;
- (e) The authority conferred on an arbitrator to change an award under s. 682.10(4) or (5);
- (f) The remedies provided under <sup>1</sup>s. 682.12;
- (g) The grounds for vacating an arbitration award under s. 682.13;
- (h) The grounds for modifying an arbitration award under s. 682.14;
- (i) The validity and enforceability of a judgment or decree based on an award under s. 682.15(1) or (2);
- (j) The validity of the Electronic Signatures in Global and National Commerce Act under s. 682.23; or
- (k) The effect of excluding from arbitration under this chapter disputes involving child custody, visitation, or child support under s. 682.25.

### **682.015 Petition for judicial relief**

- (1) Except as otherwise provided in s. 682.20, a petition for judicial relief under this chapter must be made to the court and heard in the manner provided by law or rule of court for making and hearing motions.
- (2) Unless a civil action involving the agreement to arbitrate is pending, notice of an initial petition to the court under this chapter must be served in the manner provided by law for the service of a summons in a civil action. Otherwise, notice of the motion must be given in the manner provided by law or rule of court for serving motions in pending cases.

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

- (1) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.
- (1) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.
- (2) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

## Florida Statutes on Arbitration – Chapters 44 and 682

(3) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

(4) This section also applies to written interlocal agreements under ss. 163.01 and 373.713 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.

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

(1) On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

(a) If the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate.

(b) If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

(2) On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.

(3) If the court finds that there is no enforceable agreement to arbitrate, it may not order the parties to arbitrate pursuant to subsection (1) or subsection (2).

(4) The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.

(5) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion under this section must be made in that court. Otherwise, a motion under this section may be made in any court as provided in s. 682.19.

(6) If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

(7) If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

# Florida Statutes on Arbitration – Chapters 44 and 682

## **682.031 Provisional remedies**

- (1) Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.
- (2) After an arbitrator is appointed and is authorized and able to act:
  - (a) The arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action.
  - (b) A party to an arbitration proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.
- (3) A party does not waive a right of arbitration by making a motion under this section.
- (4) If an arbitrator awards a provisional remedy for injunctive or equitable relief, the arbitrator shall state in the award the factual findings and legal basis for the award.
- (5) A party may seek to confirm or vacate a provisional remedy award for injunctive or equitable relief under s. 682.081.

## **682.032 Initiation of arbitration**

- (1) A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action. The notice must describe the nature of the controversy and the remedy sought.
- (2) Unless a person objects for lack or insufficiency of notice under s. 682.06(3) not later than the beginning of the arbitration hearing, the person by appearing at the hearing waives any objection to lack of or insufficiency of notice.

## **682.033 Consolidation of separate arbitration proceedings**

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(1) Except as otherwise provided in subsection (3), upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

- (a) There are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;
- (b) The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;
- (c) The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and
- (d) Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(2) The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

(3) The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation. Nothing in this section is intended or shall be construed to affect commencing, maintaining, or certifying a claim or defense on behalf of a class or as a class action.

### **682.04 Appointment of arbitrators by court**

(1) If the parties to an agreement to arbitrate agree on a method for appointing arbitrators, this method must be followed, unless the method fails.

(2) The court, on motion of a party to an arbitration agreement, shall appoint one or more arbitrators, if:

- (a) The parties have not agreed on a method;
- (b) The agreed method fails;
- (c) One or more of the parties failed to respond to the demand for arbitration; or
- (d) An arbitrator fails to act, and a successor has not been appointed.

(3) An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate appointed pursuant to the agreed method.

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(4) An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party may not serve as an arbitrator required by an agreement to be neutral.

### **682.041 Disclosure by arbitrator**

(1) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the person's impartiality as an arbitrator in the arbitration proceeding, including:

- (a) A financial or personal interest in the outcome of the arbitration proceeding.
- (b) An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representative, a witness, or another arbitrator.

(2) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment that a reasonable person would consider likely to affect the impartiality of the arbitrator.

(3) If an arbitrator discloses a fact required by subsection (1) or subsection (2) to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under s. 682.13(1)(b) for vacating an award made by the arbitrator.

(4) If the arbitrator did not disclose a fact as required by subsection (1) or subsection (2), upon timely objection by a party, the court may vacate an award under s. 682.13(1)(b).

(5) An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party is presumed to act with evident partiality under s. 682.13(1)(b).

(6) If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under s. 682.13(1)(b).

### **682.05 Majority action by arbitrators**

If there is more than one arbitrator, the powers of an arbitrator must be exercised by a majority of the arbitrators, but all of the arbitrators shall conduct the hearing under s. 682.06(3).

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## **682.051 Immunity of arbitrator; competency to testify; attorney fees and costs**

- (1) An arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.
- (2) The immunity afforded under this section supplements any immunity under other law.
- (3) The failure of an arbitrator to make a disclosure required by s. 682.041 does not cause any loss of immunity under this section.
- (4) In a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify and may not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of this state acting in a judicial capacity. This subsection does not apply:
  - (a) To the extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the arbitration proceeding;
  - or
  - (b) To a hearing on a motion to vacate an award under s. 682.13(1)(a) or (b) if the movant establishes prima facie that a ground for vacating the award exists.
- (5) If a person commences a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from the services of the arbitrator, organization, or representative or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of subsection (4), and the court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization, or representative reasonable attorney fees and other reasonable expenses of litigation.

## **682.06 Hearing**

- (1) An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The arbitrator's authority includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality, and weight of any evidence.

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(2) An arbitrator may decide a request for summary disposition of a claim or particular issue:

- (a) If all interested parties agree; or
- (b) Upon request of one party to the arbitration proceeding, if that party gives notice to all other parties to the proceeding and the other parties have a reasonable opportunity to respond.

(3) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than 5 days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary, but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

(4) At a hearing under subsection (3), a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(5) If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator must be appointed in accordance with s. 682.04 to continue the proceeding and to resolve 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.

### **682.08 Witnesses, subpoenas, depositions**

(1) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

(2) In order to make the proceedings fair, expeditious, and cost effective, upon request of a party to, or a witness in, an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be

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subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

(3) An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost effective.

(4) If an arbitrator permits discovery under subsection (3), the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in this state.

(5) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this state.

(6) All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this state.

(7) The court may enforce a subpoena or discovery-related order for the attendance of a witness within this state and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost effective. A subpoena or discovery-related order issued by an arbitrator in another state must be served in the manner provided by law for service of subpoenas in a civil action in this state and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this state.

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

### **682.081 Judicial enforcement of preaward ruling by arbitrator**

(1) Except as provided in subsection (2), if an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request that the arbitrator incorporate the ruling into an award under s. 682.12. A prevailing party may make a motion to the court for an expedited order to confirm the award under s. 682.12, in which case the court shall summarily

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decide the motion. The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects the award under s. 682.13 or s. 682.14.

(2) A party to a provisional remedy award for injunctive or equitable relief may make a motion to the court seeking to confirm or vacate the provisional remedy award.

(a) The court shall confirm a provisional remedy award for injunctive or equitable relief if the award satisfies the legal standards for awarding a party injunctive or equitable relief.

(b) The court shall vacate a provisional remedy award for injunctive or equitable relief which fails to satisfy the legal standards for awarding a party injunctive or equitable relief.

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## 682.09 Award

(1) An arbitrator shall make a record of an award. The record must be signed or otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

(2) An award must be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend, or the parties to the arbitration proceeding may agree in a record to extend, the time. The court or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

## 682.10 Change of award by arbitrators

(1) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

- (a) Upon a ground stated in s. 682.14(1)(a) or (c);
- (b) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or
- (c) To clarify the award.

(2) A motion under subsection (1) must be made and notice given to all parties within 20 days after the movant receives notice of the award.

(3) A party to the arbitration proceeding must give notice of any objection to the motion within 10 days after receipt of the notice.

(4) If a motion to the court is pending under s. 682.12, s. 682.13, or s. 682.14, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

- (a) Upon a ground stated in s. 682.14(1)(a) or (c);
- (b) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or
- (c) To clarify the award.

(5) An award modified or corrected pursuant to this section is subject to ss. 682.09(1), 682.12, 682.13, and 682.14.

# Florida Statutes on Arbitration – Chapters 44 and 682

## **682.11 Remedies; fees and expenses of arbitration proceeding**

- (1) An arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.
- (2) An arbitrator may award reasonable attorney fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.
- (3) As to all remedies other than those authorized by subsections (1) and (2), an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under s. 682.12 or for vacating an award under s. 682.13.
- (4) An arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award.
- (5) If an arbitrator awards punitive damages or other exemplary relief under subsection (1), the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief.

## **682.12 Confirmation of an award**

After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award at which time the court shall issue a confirming order unless the award is modified or corrected pursuant to s. 682.10 or s. 682.14 or is vacated pursuant to s. 682.13.

## **682.13 Vacating an award**

- (1) Upon motion of a party to an arbitration proceeding, the court shall vacate an arbitration award if:
  - (a) The award was procured by corruption, fraud, or other undue means;
  - (b) There was:
    1. Evident partiality by an arbitrator appointed as a neutral arbitrator;
    2. Corruption by an arbitrator; or

## Florida Statutes on Arbitration – Chapters 44 and 682

3. Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(c) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to hear evidence material to the controversy, or otherwise conducted the hearing contrary to s. 682.06, so as to prejudice substantially the rights of a party to the arbitration proceeding;

(d) An arbitrator exceeded the arbitrator's powers;

(e) There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under s. 682.06(3) not later than the beginning of the arbitration hearing; or

(f) The arbitration was conducted without proper notice of the initiation of an arbitration as required in s. 682.032 so as to prejudice substantially the rights of a party to the arbitration proceeding.

(2) A motion under this section must be filed within 90 days after the movant receives notice of the award pursuant to s. 682.09 or within 90 days after the movant receives notice of a modified or corrected award pursuant to s. 682.10, unless the movant alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion must be made within 90 days after the ground is known or by the exercise of reasonable care would have been known by the movant.

(3) If the court vacates an award on a ground other than that set forth in paragraph (1)(e), it may order a rehearing. If the award is vacated on a ground stated in paragraph (1)(a) or paragraph (1)(b), the rehearing must be before a new arbitrator. If the award is vacated on a ground stated in paragraph (1)(c), paragraph (1)(d), or paragraph (1)(f), the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in s. 682.09(2) for an award.

(4) If a motion 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 motion made within 90 days after the movant receives notice of the award pursuant to s. 682.09 or within 90 days after the movant receives notice of a modified or corrected award pursuant to s. 682.10, the court shall modify or correct the award if:

(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.

## **Florida Statutes on Arbitration – Chapters 44 and 682**

(b) The arbitrators have awarded upon a matter not submitted in the arbitration 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 motion is granted, the court shall modify and correct the award and confirm the award as so modified and corrected. Otherwise, unless a motion to vacate the award under s. 682.13 is pending, the court shall confirm the award as made.

(3) A motion to modify or correct an award may be joined in the alternative with a motion to vacate the award under s. 682.13.

### **682.15 Judgment or decree on award**

(1) Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment in conformity therewith. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.

(2) A court may allow reasonable costs of the motion and subsequent judicial proceedings.

(3) On motion of a prevailing party to a contested judicial proceeding under s. 682.12, s. 682.13, or s. 682.14, the court may add reasonable attorney fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.

### **682.181 Jurisdiction**

(1) A court of this state having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.

(2) An agreement to arbitrate providing for arbitration in this state confers exclusive jurisdiction on the court to enter judgment on an award under this chapter.

### **682.19 Venue**

A petition pursuant to s. 682.015 must be filed in the court of the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court of the county in which it was held. Otherwise, the petition may be made in the court of any county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this state, in the court of any county in this

## **Florida Statutes on Arbitration – Chapters 44 and 682**

state. All subsequent petitions must be made in the court hearing the initial petition unless the court otherwise directs.

### **682.20 Appeals**

- (1) An appeal may be taken from:
  - (a) An order denying a motion to compel arbitration made under s. 682.03.
  - (b) An order granting a motion to stay arbitration pursuant to s. 682.03(2)-(4).
  - (c) An order confirming an award.
  - (d) An order denying confirmation of an award unless the court has entered an order under s. 682.10(4) or s. 682.13. All other orders denying confirmation of an award are final orders.
  - (e) An order modifying or correcting an award.
  - (f) An order vacating an award without directing a rehearing.
  - (g) A judgment or decree entered pursuant to this chapter.
- (2) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

### **682.23 Relationship to Electronic Signatures in Global and National Commerce Act**

The provisions of this chapter governing the legal effect, validity, and enforceability of electronic records or electronic signatures and of contracts performed with the use of such records or signatures conform to the requirements of s. 102 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. s. 7002.

### **682.25 Disputes excluded**

This chapter does not apply to any dispute involving child custody, visitation, or child support.

# Florida Rules of Civil Procedure

## Florida Rules of Civil Procedure - Rules 1.700 & 1.800 - 1.830

### 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

# Florida Rules of Civil Procedure

assignment. The time for mediation or arbitration shall be tolled during any periods in which a motion to disqualify is pending.

## **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.

### *Committee Notes*

1994 Amendment. The Supreme Court Committee on Mediation and Arbitration Rules encourages crafting a combination of dispute resolution processes without creating an unreasonable barrier to the traditional court system.

## **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 three 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(2), Florida Statutes.

# Florida Rules of Civil Procedure

## Rule 1.820 Hearing Procedures for Non-Binding Arbitration

- (a) Authority of the Chief Arbitrator. The chief arbitrator has authority to commence and adjourn the arbitration hearing and carry out other duties under section 44.103, Florida Statutes. The chief arbitrator does 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 must 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 must be included in the notice of arbitration hearing sent to the parties and arbitration panel.
  - (3) Individual parties or authorized representatives of corporate parties must attend the arbitration hearing unless excused in advance by the chief arbitrator for good cause shown.
- (c) Rules of Evidence. The hearing must be conducted informally. Presentation of testimony shall be kept to a minimum, and matters must 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. On 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 must render a decision based on 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 must 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. Extensions of time must not exceed 60 days from the date of the first arbitration hearing.

# Florida Rules of Civil Procedure

- (2) On the completion of the arbitration process, the arbitrator(s) must render a decision. In the case of the panel, a decision must be final on 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.
  - (4) Any transcripts or exhibits used in the arbitration must, unless otherwise ordered by the court or agreed by the parties, be retained by the party who introduced the transcripts or exhibits until the conclusion of the case, or until otherwise ordered by the court.
- (h) Notice of Rejection of the Arbitration Decisions and Request for Trial. To reject the arbitration decision, within 20 days of service of the arbitrator('s)(s') written decision, any party must file a notice of the rejection of the arbitration decision and request for trial in the same document. No action or inaction by any party, other than the filing of the notice, will be deemed a rejection of the arbitration decision. If a rejection of the arbitration decision and request for trial is filed by any party, any party having a third-party claim at issue at the time of arbitration may file a rejection of the arbitration decision and request for trial within 10 days of service of the first rejection of the arbitration decision and request for trial. If a rejection of the arbitration decision and request for trial is not made within 20 days of service on the parties of the decision, the decision must be referred to the presiding judge, who must 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.

## Committee Notes

2007 Amendment. Subdivision (h) is amended to avoid the unintended consequences for defendants with third-party claims who prevailed at arbitration but could not pursue those claims in a circuit court action because no motion for trial was filed despite a plaintiff or plaintiffs having filed a motion for trial that covered those claims. See *State Dept. of Transportation v. BellSouth Telecommunications, Inc.*, 859 So. 2d 1278 (Fla. 4<sup>th</sup> DCA 2003).

2003 Amendment. The statutory reference in subdivision (h) is changed to reflect changes in statutory numbering.

1994 Amendment. The Supreme Court Committee on Mediation and Arbitration Rules recommends that a copy of the local arbitration procedures be disseminated to the local bar.

# Florida Rules of Civil Procedure

1988 Adoption. Arbitration proceedings should be informal and expeditious. The court should take into account the nature of the proceedings when determining whether to award costs and attorneys' fees after a trial de novo. Counsel are free to file exceptions to an arbitration decision or award at the time it is to be considered by the court. The court should consider such exceptions when determining whether to award costs and attorneys' fees. The court should consider rule 1.442 concerning offers of judgment and section 45.061, Florida Statutes (1985), concerning offers of settlement, as statements of public policy in deciding whether fees should be awarded.

## **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**

## **Part I Arbitrator Qualifications**

### **Rule 11.010 Qualification**

The chief or sole arbitrator must be, and have been for the preceding five years, a member of The Florida Bar in good standing, unless the parties agree in writing that the chief or sole arbitrator may be an individual who has been for the preceding five years a member in good standing and eligible to practice law in any United States jurisdiction, which includes the District of Columbia and any state, commonwealth, territory, or possession of the United States. An individual who is not licensed to practice law in any United States jurisdiction and who is not currently disbarred or suspended from practice in any jurisdiction may serve as a non-chair arbitrator on an arbitration panel with 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.

# Florida Rules for Court-Appointed Arbitrators

## 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.

# Florida Rules for Court-Appointed Arbitrators

## 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:

# Florida Rules for Court-Appointed Arbitrators

(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 that such discussion 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

# Florida Rules for Court-Appointed Arbitrators

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.

## *Committee Notes*

The duty to disclose potential conflicts includes the fact of membership on a board of directors, full-time or part-time service as a representative or advocate, consultation work for a fee, current stock or bond ownership (other than mutual fund shares or appropriate trust arrangements), or any other pertinent form of managerial, financial or immediate family interest of the party involved. An arbitrator who is a member of a law firm is obliged to disclose any representational relationship the member firm may have had with the parties. Arbitrators establish personal relationships with many representatives, attorneys, arbitrators, other members of various professional associations. There should be no attempt to be secretive about such friendships or acquaintances, but disclosure is not necessary unless some feature of a particular relationship might reasonably appear to impair impartiality.

## **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.

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## 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.

## Part III Discipline

### Rule 11.130 Chief Judge Responsibility

Arbitrators shall serve at the pleasure of the chief judge, who shall be responsible for enforcing the rules of conduct for arbitrators appointed pursuant to chapter 44, Florida Statutes.

#### *Committee Notes*

The Florida Supreme Court Standing Committee on Mediator and Arbitrator Rules believes that arbitrator discipline, unlike mediator discipline, should be administered by the chief judge rather than by a board appointed for that purpose. The primary reason for this distinction is that there is presently no statewide arbitrator certification process. Rather, arbitrators are made eligible by placement on a list by the chief judge. See Florida Rule of Civil Procedure 1.810(a). It was the feeling of the committee that a method of removal consistent with that of appointment, that is, discretion of the chief judge, would also be appropriate. The rules make the chief judge responsible for enforcing the rules of conduct for arbitrators appointed pursuant to chapter 44, Florida Statutes. The committee reserves the right to reconsider the effectiveness of this method of discipline after observing operation for a period of time. If this method of removal proves to be ineffective, a board to conduct discipline may need to be appointed. It should, however, be noted that a similar system for the removal of quasi-judicial officers exists in relation to masters, Florida Rule of Civil Procedure 1.490(a), child support

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

enforcement officers, Florida Rule of Civil Procedure 1.491(c), and traffic magistrates, Florida Rule of Traffic Court 6.630(c).

Appeals from decisions of the chief judge shall be taken in the same manner as any other matter appealed from the chief judge.

## **Essential Attributes for Arbitration Training for approval by the Supreme Court of Florida**

### **Training Specifics:**

- A minimum of four hours in length exclusive of breaks and based on a 60-minute hour. Appropriate breaks must be provided – for every two hours of training, five minutes of breaks must be added; in addition, if the training lasts over six hours, there must be a minimum of 30 minutes provided for an extended break.
- Offered in a live format, whether in-person or online (does not preclude the use of recorded components).
- Conducted by an approved primary trainer.

### **Content:**

- Review arbitration procedures for court-ordered cases including:
  - (a) how cases are referred;
  - (b) relevant limitation(s) on types of cases which can be referred to arbitration;
  - (c) how arbitrators will be selected or assigned;
  - (d) the practice and business of arbitration; and
  - (e) any other procedural information.
- Include an overview of the Florida Rules of Civil Procedure and s. 44.103 and 44.104, F.S. which govern court-ordered/non-binding arbitration and voluntary/binding arbitration through the court (must include discussion of difference between mediation and arbitration; difference between mandatory/nonbinding arbitration and voluntary/binding arbitration; distinguish voluntary trial resolution judges from arbitrators; and distinguish “court-connected” arbitrations from other types of arbitration.
- Include a simulation (either recorded or live) of a court-ordered (mandatory/nonbinding) arbitration of at least one hour in duration which shall include the presentation of facts and the deliberation portions. Following the arbitration deliberation, participants should have an opportunity to ask questions. This segment should also cover how an arbitrator makes a decision, e.g., based on law or based on equity.

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- Discuss various types of possibilities for rendering an award and the legal standing criteria which must be met in rendering an award. At a minimum, the following types shall be included: 1) simple form (no explanations); 2) detailed findings of fact, reasoning and conclusion of law; 3) “reasoned” award (not necessarily have the conclusions of law).
- Raise critical ethical issues and review rules 11.010 – 11.130, Florida Rules for Court-Appointed Arbitrators. In addition, arbitrator ethics should be woven throughout the program.

### **Required Materials:**

- The following materials shall be provided:
  - (a) Chapter 44, Florida Statutes;
  - (b) Rules 1.700 - 1.830, Florida Rules of Civil Procedure Florida Rules for Court-Appointed Arbitrators;
  - (c) Rule 1-3.11, Appearance by Non-Florida Lawyer in an Arbitration Proceeding in Florida, Florida Rules Regulating the Florida Bar;
  - (d) Sample administrative order(s) and sample local rule(s);
  - (e) Sample forms; and
  - (f) Sample awards including one simple, one full, and one reasoned.
- Provide the Dispute Resolution Center (DRC), Office of the State Courts Administrator, Supreme Court of Florida, with a set of materials to be used in the arbitration program including copies of any exercises, exams, recordings, and/or role plays. Once a set of materials has been submitted, the program need not send a complete set with each program offering but must provide copies of any new materials to be used, as well as any modifications to previously submitted materials.

### **Trainer Qualifications:**

- A primary trainer must have both court-ordered arbitration experience and training experience. Specific requirements include:

Arbitration Training Received: Successful completion of a court-ordered non-binding arbitration training which has been approved by the Supreme Court of Florida.

## **Essential Attributes for Arbitration Training for approval by the Supreme Court of Florida**

Arbitration Experience: Arbitrated a minimum of 5 complete Florida court-ordered/non-binding arbitrations (*or their equivalent*) *OR* have adjudicatory experience as a judge, special master, hearing officer, or magistrate. In addition, must have served as an arbitrator in at least one court-ordered arbitration within the last two years.

Training Delivery Experience: Had responsibility as a trainer (as a lecturer and not a role play critiquer) in a minimum of 5 distinct training programs relating to ADR (minimum of 60 minutes per training program or at least 30% of the total program whichever is greater).

- Subject matter specialist shall have a substantial part of his or her professional practice in the area about which the specialist is lecturing and shall have the ability to connect his or her expertise with the arbitration process.

### **Other Requirements:**

- Any arbitration training program certified by the Supreme Court of Florida as meeting the requirements outlined herein shall be certified for a period of three years. During such time, training programs shall provide the DRC with any and all changes made to training materials and agenda, including any modifications and updates of such information. The DRC will review these amendments and determine if such substantial changes have been made so as to render the program a new program requiring separate certification.
- At least 30 days in advance of any course offering, the DRC shall be notified of the dates for any certified arbitration training program offering and the provider shall file a copy of an annotated agenda which will be utilized during the training (including an identification of who will be presenting each portion).
- The provider shall provide the DRC with copies of all advertisements, including web and email announcements, at the time the advertisement is distributed. The DRC reserves the right to attend any program for auditing purposes.
- Participants must complete their training requirements by attending one entire training program. The training program, in conjunction with the trainer, is responsible for ensuring that the integrity of each portion of the program is not compromised. Any portion of the training missed shall be made up as directed by the trainer. If a participant misses any portion or portions of the training program which compromise(s) the integrity of the

## **Essential Attributes for Arbitration Training for approval by the Supreme Court of Florida**

program, the training program shall require the participants to repeat an entire program. It is the responsibility of the training program to delineate a specific remedial course of action for participants who do not successfully complete the program.

- The provider shall provide each participant with a signed and dated certificate indicating completion of the training in compliance with rule 11.020, Florida Rules for Court-Appointed Arbitrators, and send to the DRC, within 14 days of the course completion, a list of individuals who have successfully completed the course. Successful completion is defined as: attendance by the participant at the entire training program and completion of all requirements. Trainers must have a means of ensuring that all participants attended the entire program (may be accomplished through sign in/sign out lists or other means).
- Each participant shall evaluate the training program on a form designed by the DRC. Such evaluation forms shall be retained by the training program for no less than three years, and a copy of the evaluation forms must be sent to the DRC (may be attached as a pdf to an e-mail).
- The DRC shall be responsible for monitoring compliance with the training attributes and any other responsibility deemed appropriate by the Supreme Court Committee on Alternative Dispute Resolution Rules and Policy.