

**(l) Penalty for Failure to Comply.** Failure to comply with the requirements of this Local Rule will subject the party or counsel to appropriate penalties, including but not limited to dismissal of the cause, or the striking of defenses and entry of judgment.

Effective December 1, 1994. Amended effective April 15, 1996; April 15, 1997; April 15, 1998; April 15, 2001; April 15, 2004; April 15, 2007; April 15, 2010; April 15, 2011; December 1, 2011; December 3, 2012; December 1, 2015; December 1, 2017; December 2, 2019.

### **Authority**

(1993) Former Local Rule 17.

## **RULE 16.2 COURT ANNEXED MEDIATION**

### **(a) General Provisions.**

(1) *Definitions.* Mediation is a supervised settlement conference presided over by a qualified, certified, and neutral mediator, or anyone else whom the parties agree upon to serve as a mediator, to promote conciliation, compromise and the ultimate settlement of a civil action.

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

The mediation process does not allow for testimony of witnesses. The mediator does not review or rule upon questions of fact or law, or render any final decision in the case. Absent a settlement, the mediator will report to the presiding Judge only as to whether the case settled (in full or in part) or was adjourned for further mediation, whether the mediator declared an impasse, and pursuant to Local Rule 16.2(e), whether any party failed to attend the mediation.

(2) *Purpose.* It is the purpose of the Court, through adoption and implementation of this Local Rule, to provide an alternative mechanism for the resolution of civil disputes leading to disposition before trial of many civil cases with resultant savings in time and costs to litigants and to the Court, but without sacrificing the quality of justice to be rendered or the right of the litigants to a full trial in the event of an impasse following mediation. Mediation also enables litigants to take control of their dispute and encourages amicable resolution of disputes.

### **(b) Certification; Qualification of Certified Mediators; Compensation of Mediators.**

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

(2) *Lists of Certified Mediators.* Lists of certified mediators shall be maintained in the offices of the Clerk of the Court and shall be made available to counsel and the public upon request.

(3) *Qualifications of Certified Mediators.* An individual may be certified to serve as a mediator in this District provided that the individual shall:

(A) be an attorney who has been admitted for at least ten (10) consecutive years to one or more State Bars or the Bar of the District of Columbia; and

(B) currently be a member in good standing of The Florida Bar and the Bar of this Court; and

(C) have substantial experience either as a lawyer or mediator in matters brought in any United States District Court or Bankruptcy Court; and

(D) have been certified and remain in good standing as a circuit court mediator under the rules adopted by the Supreme Court of Florida; and

(E) have substantial experience as a mediator.

The advisory committee may recommend for certification an attorney to serve as a mediator in this District if it determines that, for exceptional circumstances, the applicant should be certified who is not otherwise eligible for certification under this section.

Any individual who seeks certification as a mediator shall agree to accept at least two (2) mediation assignments per year in cases where at least one (1) party lacks the ability to compensate the mediator, in which case the mediator's fees shall be reduced accordingly or the mediator shall serve pro bono (if no litigant is able to contribute compensation).

The Chief Judge shall constitute an advisory committee from lawyers who represent those categories of civil litigants who may utilize the mediation program and lay persons to assist in formulating policy and additional standards relating to the qualification of mediators and the operation of the mediation program and to review applications of prospective mediators and to recommend certification to the Chief Judge as appropriate.

(4) *Standards of Professional Conduct for Mediators.* All individuals who mediate cases pending in this District shall be governed by the Standards of Professional Conduct in the Florida Rules for Certified and Court-Appointed Mediators adopted by the Florida Supreme Court (the "Florida Rules") and shall be subject to discipline and the procedures therefor set forth in the Florida Rules. Every mediator who mediates a case in this District consents to the jurisdiction of the Florida Dispute Resolution Center and the committees and panels authorized thereby for determining the merits of any complaint made against any mediator in this District.

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

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

(7) *Compensation of Mediators.* Mediators shall be compensated (a) at the rate provided by standing order of the Court, as amended from time to time by the Chief Judge, if the mediator is appointed by the Clerk on a blind, random basis; or (b) at such rate as may be agreed to in writing by the parties and the mediator, if the mediator is selected by the parties. Absent agreement of the parties to the contrary, the cost of the mediator's services shall be borne equally by the parties to the mediation conference. A mediator shall not negotiate or mediate the waiver or shifting of responsibility for payment of mediation fees from one party to the other. All mediation fees payable under this rule shall be due within forty-five (45) days of invoice and shall be enforceable by the Court upon motion.

**(c) Types of Cases Subject to Mediation.** Unless expressly ordered by the Court, the following types of cases shall not be subject to mediation pursuant to this rule:

- (1) Habeas corpus cases;
- (2) Motion to vacate sentence under 28 U.S.C. § 2255;
- (3) Social Security cases;
- (4) Civil forfeiture matters;
- (5) IRS summons enforcement actions;
- (6) Land condemnation cases;
- (7) Default proceedings;
- (8) Student loan cases;
- (9) Naturalization proceedings filed as civil actions;
- (10) Statutory interpleader actions;
- (11) Truth-in-Lending Act cases not brought as class actions;

(12) Letters rogatory; and

(13) Registration of foreign judgments.

**(d) Procedures to Refer a Case or Claim to Mediation.**

(1) *Order of Referral.* In every civil case excepting those listed in Local Rule 16.2(c), the Court shall enter an order of referral similar in form to the proposed order available on the Court's website ([www.flsd.uscourts.gov](http://www.flsd.uscourts.gov)), which shall:

(A) Direct mediation be conducted not later than sixty (60) days before the scheduled trial date which shall be established no later than the date of the issuance of the order of referral.

(B) Direct the parties, within fourteen (14) days of the date of the order of referral, to agree upon a mediator. The parties are encouraged to utilize the list of certified mediators established in connection with Local Rule 16.2(b) but may by mutual agreement select any individual as mediator. The parties shall file and serve a "Notice of Selection of Mediator" within that period of time. If the parties are unable to agree upon a mediator, plaintiff's counsel, or plaintiff if self-represented, shall file and serve a "Request For Clerk To Appoint Mediator," and the Clerk will designate a mediator from the list of certified mediators on a blind, random basis.

(C) Direct that, at least fourteen (14) days prior to the mediation date, each party give the mediator a confidential written summary of the case identifying issues to be resolved.

(2) *Coordination of Mediation Conference.* Plaintiff's counsel (or another attorney agreed upon by all counsel of record) shall be responsible for coordinating the mediation conference date and location agreeable to the mediator and all counsel of record.

(3) *Stipulation of Counsel.* Any action or claim may be referred to mediation upon stipulation of the parties.

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

**(e) Party Attendance Required.** Unless excused in writing by the presiding Judge, all parties and required claims professionals (*e.g.*, insurance adjusters) shall be physically present at the mediation conference (*i.e.*, in person if the party is a natural person or by personal attendance of a corporate representative if the party is an entity) with full authority to negotiate a settlement. If a party to a mediation is a public entity required to conduct its business pursuant to Florida Statutes Chapter 286,

and is a defendant or counterclaim defendant in the litigation, that party shall be 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. The representative shall not be solely the public entity's counsel (or firm) of record, however, the representative may be the public entity's in-house counsel where another counsel of record for the public entity is also present. In cases where the in-house counsel is counsel of record, that counsel and another representative may act as duly authorized representatives of the public entity. In cases where the parties include a public entity and/or individuals who were or are employed by a public entity or elected officials of a public entity, such individual parties do not need to attend the mediation conference if all claims asserted against the individuals are covered by insurance or by an indemnification from the public entity for purposes of mediation. Notwithstanding the foregoing, counsel representing the individual defendants shall provide the individual defendants with notice of the mediation conference and the individual defendants shall have the right to attend the mediation conference. The mediator shall report non-attendance to the Court. Failure to comply with the attendance or settlement authority requirements may subject a party to sanctions by the Court.

**(f) Mediation Report; Notice of Settlement; Judgment.**

(1) *Mediation Report.* Within seven (7) days following the mediation conference, the mediator shall provide the parties with a Mediation Report. If the mediator is an authorized user of the Court's electronic filing system (CM/ECF) then the mediator shall electronically file and serve a Mediation Report. If the mediator is not an authorized CM/ECF user, the mediator shall either: (a) file the Mediation Report conventionally; or (b) with the consent of the parties, arrange for one of the parties to file a "Notice of Filing Mediator's Report," which shall attach the report as an exhibit.

(2) *Notice of Settlement.* In the event that the parties reach an agreement to settle the case or claim, counsel shall promptly notify the Court of the settlement pursuant to the requirements of S.D. Fla. L.R. 16.4.

**(g) Trial upon Failure to Settle.**

(1) *Trial upon Failure to Settle.* If the mediation conference fails to result in a settlement, the case will be tried as originally scheduled.

(2) *Restrictions on the Use of Information Derived During the Mediation Conference.* All proceedings of the mediation shall be confidential and are privileged in all respects as provided under federal law and Florida Statutes § 44.405. The proceedings may not be reported, recorded, placed into evidence, made known to the Court or jury, or construed for any purpose as an admission against interest. A party is not bound by anything said or done at the conference, unless a written settlement is reached, in which case only the terms of the settlement are binding.

Effective December 1, 1994. Amended effective April 15, 1996; April 15, 1997; April 15, 1999; April 15, 2004; April 15, 2005; April 15, 2007; April 15, 2009; April 15, 2010; December 1, 2011;

December 3, 2012; December 1, 2014; December 1, 2015; December 1, 2017; December 3, 2018; December 2, 2019.

### **RULE 16.3 CALENDAR CONFLICTS**

Calendar conflicts will be resolved and notice shall be given in accordance with the Resolution of the Florida State-Federal Council Regarding Calendar Conflicts Between State and Federal Courts (available on the Court’s website: [www.flsd.uscourts.gov](http://www.flsd.uscourts.gov) ) or as otherwise agreed to between the Judges in a given case.

Effective April 15, 2000. Amended effective April 15, 2006; April 15, 2007; December 1, 2011; December 1, 2015.

#### **Authority**

(2000) Resolution of the Florida State-Federal Council Regarding Calendar Conflicts Between State and Federal Courts. *See also* Fla.R.Jud.Admin. 2.052.

(2006) *Krasnow v. Navarro*, 9 F.2d 451 (11th Cir. 1990).

### **RULE 16.4 NOTICE OF SETTLEMENT**

If the parties reach an agreement to settle the entire case or certain claims or issues therein, counsel shall notify the Court of such settlement by filing and serving a notice of settlement within two (2) Court days of such agreement being reached. The notice shall be filed and served jointly by counsel for all parties to the settlement. Alternatively, the parties may file and serve a notice or stipulation, as applicable, pursuant to Fed. R. Civ. P. 41. But unless such notice or stipulation is filed within two (2) Court days of the parties reaching a settlement, the parties are still required to file and serve a separate notice of settlement.

Effective December 1, 2017; December 3, 2018; December 2, 2019.

### **RULE 23.1 CLASS ACTIONS**

In any case sought to be maintained as a class action:

(a) The pleading shall bear next to its caption the legend “Class Action.”

(b) The pleading shall contain under a separate heading, styled “Class Action Allegations:”

(1) A reference to the portion or portions of Federal Rule of Civil Procedure 23 under which it is claimed that the suit is properly maintainable as a class action.

(2) Appropriate allegations thought to justify such claim, including, but not necessarily limited to: