

Comparative Appellate Mediation Practices



Presented by:

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Learning Objectives



- ❧ Ensure that all Appellate Mediators know the background for why Rule 9.700 exists.
- ❧ Discuss the important differences between appellate mediation in different state courts of appeal.
- ❧ Compare the important differences between state appellate mediation practice and its federal counterpart.



What is Rule 9.700?



- ❧ Implemented 5 years ago in 2011
- ❧ Drafted by Appellate Mediation Subcommittee of the Florida Supreme Court's Dispute Resolution Center's Alternative Dispute Resolution Rules & Policy Committee
- ❧ Committee included Judge William D. Palmer of the Fifth DCA and Judge W. Matthew Stevenson of Fourth DCA
- ❧ There was once an intentional gap in the Appellate Rules of Procedure between 9.600 and 9.800
- ❧ Main purpose of Rule 9.700 is to "promote uniformity in the way appellate mediations are conducted" according to Judge Stevenson



Judge William D. Palmer



Judge W. Matthew Stevenson

Appellate Rule of Procedure 9.700, et. seq.



RULE 9.700. MEDIATION RULES

(a) Applicability. Rules 9.700 – 9.740 apply to all appellate courts, including circuit courts exercising jurisdiction under rule 9.030(c), district courts of appeal, and the Supreme Court of Florida.

(b) Referral. The court, upon its own motion or upon motion of a party, may refer a case to mediation at any time. Such motion from a party shall contain a certificate that the movant has consulted opposing counsel or unrepresented party and that the movant is authorized to represent that opposing counsel or unrepresented party:

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

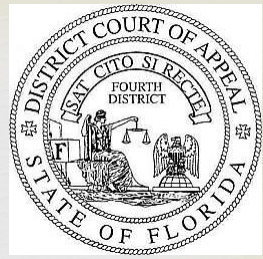
(c) Time Frames for Mediation. The first mediation conference shall be commenced within 45 days of referral by the court, unless the parties agree to postpone mediation until after the period for filing briefs has expired. The mediation shall be completed within 30 days of the first mediation conference. These times may be modified by order of the court.

(d) Tolling of Times. Unless otherwise ordered, or upon agreement of the parties to postpone mediation until after the expiration of time for filing the appellate briefs, all times under these rules for the processing of cases shall be tolled for the period of time from the referral of a case to mediation until mediation ends pursuant to section 44.404, Florida Statutes. The court, by administrative order, may provide for additional tolling of deadlines. A motion for mediation filed by a party within 30 days of the notice of appeal shall toll all deadlines under these rules until the motion is ruled upon by the court.

(e) Motion to Dispense with Mediation. A motion to dispense with mediation may be served not later than 10 days after the discovery of the facts which constitute the grounds for the motion, if:

- (1) the order violates rule 9.710; or
- (2) other good cause is shown.

Florida Fourth DCA



- ❧ First prototype
- ❧ Reduced the number of cases overall with their ADR program
- ❧ Mediators were employees of the Court
- ❧ State-funded
- ❧ Eventually discontinued for lack of funding



Florida First DCA



- ❧ Same approach as Fourth DCA
- ❧ Same conclusion as Fourth DCA
- ❧ Eventually discontinued
- ❧ Attempted video mediations
- ❧ Technology was not as effective at the time



Florida Fifth DCA



- ❧ The Fifth DCA had a different approach toward Appellate Mediation
- ❧ Modeled after the effective private-mediation model used by Circuit Courts throughout the state
- ❧ Florida Rules of Civil Procedure Rule 1.700, et. seq.
- ❧ Rule 1.700(a) - Court has the authority to mandate that cases be referred to mediation
- ❧ Rule 1.700(f),(g) - Mediator would be selected by the parties and expenses would be split amongst them
- ❧ Allows parties to choose from a list of qualified mediators

Fifth DCA Statistics



Year	Appellate Cases Mediated ¹	Successful Mediation (Full Dismissal after mediation) ²	Percentage Successfully Mediated
2001 ³	33	6	18.2%
2002	69	16	23.2%
2003	65	22	33.8%
2004	91	38	41.8%
2005	96	42	43.7%
2006 ⁴	124	59	47.5%

¹ This number does not include cases dismissed before mediation or cases for which the referral was withdrawn prior to mediation.

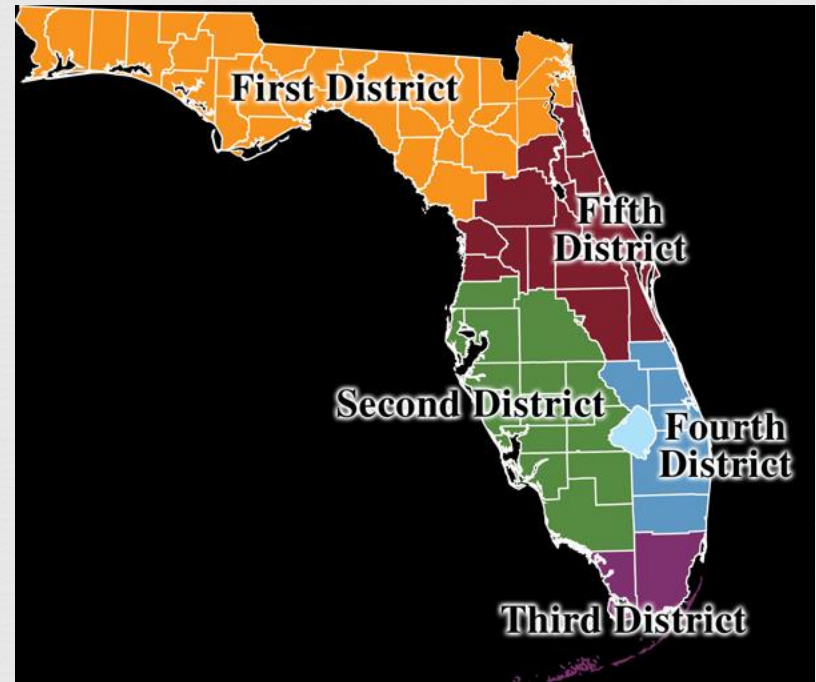
² This number does not include partial settlements whereby one or more issues may have been settled. Inclusion of partial settlements would yield an even higher success ratio.

³ Includes cases from the inception of the program May 1, 2001, through the end of the calendar year.

⁴ This chart was prepared on statistics current as of March 12, 2007 and accordingly does not reflect the resolution of 16 cases referred to mediation at the end of 2006 for which mediation is pending or the results have not yet reached the court.

What Does Rule 9.700 Allow in the DCA's?

- ☞ Option to implement the rule into effect
- ☞ Amendments to the Rule
- ☞ Allows for different types of practice for mediators



Referral Program Optional



(b) Referral. The court, upon its own motion or upon motion of a party, may refer a case to mediation at any time. Such motion from a party shall contain a certificate that the movant has consulted opposing counsel or unrepresented party and that the movant is authorized to represent that opposing counsel or unrepresented party:

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Timing Issues Settled



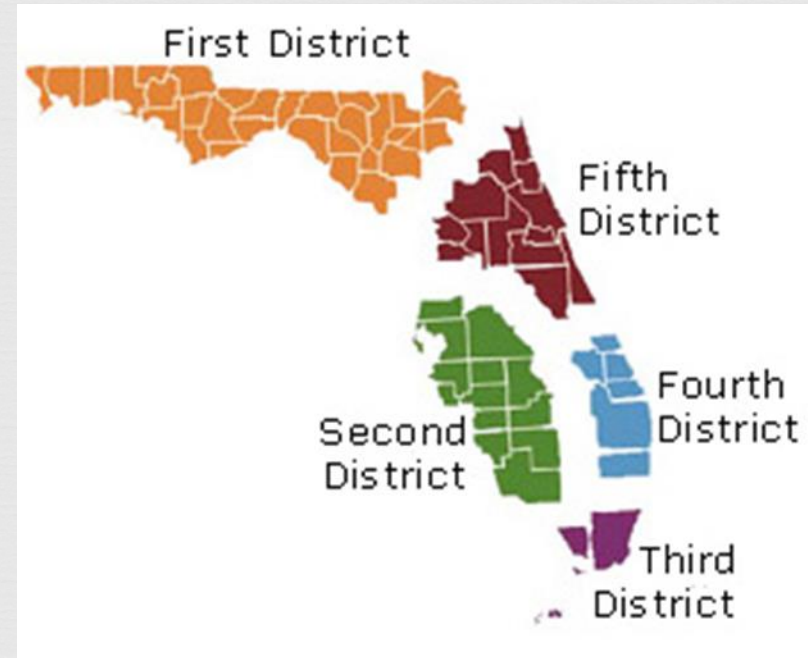
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Comparison Between the DCA's

- ❧ 5th DCA – Still the standard bearer for appellate mediation
- ❧ 1st DCA – Complexities with mediation for statewide appeals
- ❧ 2nd DCA – Favorable application of new rules
- ❧ 3rd and 4th DCA – Still adjusting in the Southern Districts



Eleventh Circuit Court of Appeals



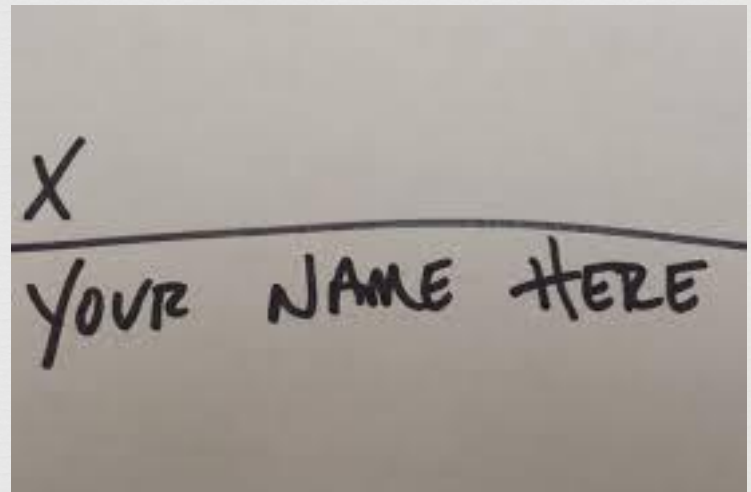
- Parties mediate by the coordination of the Kinnard Mediation Center
- Parties can appear telephonically
- Two locations in Florida – Miami and Jacksonville



Opt Out Option



- ❧ Began October 1, 2006
- ❧ Option to not use a Kinnard Mediation Center location
- ❧ Option to elect a private mediator
- ❧ Agreement of all parties required at their expense



Trends Going Forward



- ⌘ Expanding DCA mediations?
- ⌘ Circuit Court Appellate mediations?
- ⌘ Private mediation in Federal Appeals





QUESTIONS??



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