

IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR BAY COUNTY

**IN RE: GENERAL PROCEDURE ASSOCIATE WITH ARBITRATION
IN CIVIL CASES**

ADMINISTRATIVE ORDER NO. 99-07

WHEREAS the Supreme Court of Florida has granted the Fourteenth Judicial Circuit the responsibility of establishing a court program to implement alternative dispute resolution techniques in the circuit and county courts; and

WHEREAS section 44.103, Florida Statutes (1997), provides that a court may refer any contested civil action to court annexed nonbinding arbitration, with the exception of those matters specifically excluded by rule 1.800, Florida Rules of Civil Procedure; and

WHEREAS section 44.104, Florida Statutes (1997), provides that the parties to a civil dispute may agree to submit the controversy to voluntary binding arbitration provided the disputes does not involve a constitutional issue, child custody, visitation, or the rights of a third party not a party to arbitration; and

WHEREAS rule 1.810 (b), Florida Rules of Civil Procedure, provides that the Chief Judge of each circuit shall establish the rate of compensation for arbitrators appointed pursuant to section 44.103, Florida Statutes (1997), subject to the limitations set forth in section 44.103 (2), Florida Statutes; and

WHEREAS rule 1.820 (b) (1), Florida Rules of Civil Procedure, further provides that the Chief Judge may establish procedures for determining the time and place of the arbitration hearing and for the expeditious and orderly operation of arbitration hearing; and

WHEREAS it is necessary for the prompt and efficient administration of justice in this court; it is therefore

ORDERED:

1. **Selection of Arbitrators.** Within fifteen days from the date of the Order Referring the Parties to Non-Binding Arbitration, the parties shall notify the judge assigned to the particular case of their selection(s) for arbitrator(s). Selections shall be made as set forth in the Order Referring Parties to Non-Binding Arbitration.

If the parties' intent to designate their choice is not received by the presiding judge within the time limits set herein, the court will appoint the arbitrator(s) in the matter.

2. **Scheduling of Arbitration Hearings.** Plaintiff's counsel is responsible for taking the lead with respect to scheduling arbitration hearings and notifying the arbitrator(s) of available dates. Approximately three (3) hours should be reserved for the hearing when coordinating schedules; however, more or less time may be reserved based upon the complexity of the case to be heard. A hearing must be scheduled within twenty (20) days of the date of the Order Referring Parties to Non-Binding Arbitration, and the first hearing must be held no later than ninety (90) days after the Order Referring Parties to Non-Binding Arbitration. Any additional hearings will be held in accordance with the time standards set forth in the Florida Rules of Civil Procedure. The arbitrator/chief shall in writing notify the parties of the date, time and place of the arbitration proceeding. The arbitrator and date selections shall be provided in writing to the presiding judge.

3. **Attendance.** Individual parties and authorized representatives of corporate or other similar type parties are required to attend the arbitration hearing, unless excused in advance by the arbitrator/chief arbitrator. A corporation or partnership must send to the hearing a representative with full authority to settle the matter. If an insurance company is involved in the matter, the insurance carrier shall send a company representative with full and absolute authority to resolve the matter for an amount which is the lesser of the policy limits or the most recent demand of the adverse party.

4. **Failure to Attend the Arbitration Hearing.** If a party fails to appear for a scheduled hearing, the arbitrator/chief arbitrator may proceed with the hearing and the arbitrators shall render a decision based upon the facts and circumstances as presented by the parties present. Parties may be represented by counsel; however, counsel shall not be considered a representative of the party as referred to in Section 3 above. If a party fails to attend an arbitration hearing, the court may apply sanctions including the entry of a final judgement based upon the arbitration award, the striking of pleadings or portions thereof, the awarding of costs and attorney's fees, and/or contempt proceedings.

5. **Discovery and Evidence.** All parties are ordered to complete such discovery as they deem sufficient for the settlement of the case prior to the arbitration

hearing. In the event the parties disagree as to what constitutes sufficient discovery, the parties may petition the court for a ruling on the matter. If sufficient discovery has not been conducted, the arbitration hearing shall be rescheduled. The parties shall be limited to one rescheduling on these grounds providing the time standards set forth in paragraph 2 of this Administrative Order are observed.

The parties shall exchange copies of all documentary evidence and lists of any witnesses that counsel intends to offer in the arbitration hearing no later than 10 days prior to the hearing and provide the Arbitrator/Chief Arbitrator with same. Testimonial evidence shall be limited to situations involving an issue of credibility of a witness.

The parties shall submit a case summary to each arbitrator no later than 10 days before the scheduled hearing.

6. **Authority of the Chief Arbitrator.** In cases submitted to an arbitration panel or single arbitrator, the arbitrator/chief arbitrator shall have the authority to commence and adjourn the arbitration hearing, administer oaths, issue subpoenas for the attendance of witnesses and production of evidence, and carry out other such duties as are prescribed by section 44.103, Florida Statutes. The arbitrator/chief arbitrator shall not have the authority to hold any person in contempt or to in any way impose sanctions against any person. The arbitrator/chief arbitrator may petition the court to enforce any instructions the arbitrator(s) may issue.

7. **Presentation.** The hearing shall be conducted in an informal manner. While it is expected that presentation of the case shall be done primarily by counsel for the parties and shall be in the form of an opening and closing statement at trial, witnesses may be present and give live testimony as they would in regular trial. If counsel for the parties opt for the abbreviated form of hearing, counsel shall present only factual representations supportable by reference to discovery materials, signed statements of witnesses, stipulations and other documents.

8. **Cancellation of the Hearing or Settlement of the Case.** Requests for rescheduling of the hearing shall be made to the arbitrator/chief arbitrator a minimum of

two working days prior to the hearings and shall be granted only upon good cause shown. Failure to provide the requested notice shall result in the assessment of costs and fees as provided below.

Plaintiff must notify the arbitrator/chief arbitrator, in writing, within 48 hours of any settlement, dismissal, or rescheduling of this action. In the event timely notification is not received by the arbitrator/chief arbitrator, the parties may be assessed the cost of arbitration, which shall include one hour of the arbitrator's or panel's time. In the event a party fails to attend a scheduled arbitration hearing, upon proper motion, the court may issue sanctions as provided in Section 5 above.

9. **Non-Binding Arbitration Decision.** The original decision of the arbitrator(s) shall be submitted to the presiding judge within 10 days following the hearing, and copies of the decision shall be forwarded by the arbitrator(s) to all parties and arbitrators; the original copy of the decision and any transcripts, and/or exhibits submitted to the presiding judge shall be sealed by the arbitrator/chief arbitrator and filed with the Bay County Clerk of Circuit Court.

A motion for *trial de novo* must be made within 20 days after the decision has been served; otherwise, the matter shall be referred to the presiding judge who shall enter such orders and judgments as are required to carry out the terms of the decision. Such orders shall be enforceable by the contempt powers of the court, and for which judgement, execution shall issue on request of a party. If the judgment at trial is not more favorable than the decision of the arbitrator, the court may assess against the party that filed for the *trial de novo* the arbitration costs, court costs, and other reasonable costs of the party, including but not limited to attorney's fees, investigation expenses, and expenses for expert or other testimony or evidence incurred after the arbitration hearing.

10. **Voluntary Binding Arbitration.** Two or more parties who are involved in a civil dispute may agree in writing to submit the controversy to voluntary binding arbitration in lieu of litigation of the issues involved, prior to or after a lawsuit has been filed, provided no constitutional issue is involved.

A. If the parties have entered into an agreement which provides for a method for the appointment of one or more arbitrators, the court shall proceed with the

appointment as prescribed, except the at least one of the arbitrators, who shall serve as the Chief Arbitrator, shall meet the qualifications and training requirements adopted pursuant to section 44.106, Florida Statutes (1997). 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.

B. The arbitrators shall each be compensated by the parties according to their agreement, but not at an amount less than the amount specified in section 44.104, Florida Statutes (1997), as it may from time to time be amended.

C. Within 15 days of the submission of the request for binding arbitration, the court shall provide for the appointment of the arbitrator or arbitrators. Once appointed, the parties will coordinate their schedules and plaintiff's counsel will have the responsibility to notify the presiding judge of the date, time and place for the hearing. The plaintiff's attorney will then issue notices for the scheduled hearing.

D. Application for voluntary binding arbitration shall be filed and fees paid to the Bay County Clerk of Circuit Court as if for complaints initiating civil actions. The Bay County Clerk of Circuit Court shall handle and account for these matters in all respects as if they were civil actions, except that the Clerk shall keep separate the records of the applications for voluntary binding arbitration from all other civil actions.

E. Filing of the application for binding arbitration will toll the running of the applicable statutes of limitation.

F. The Chief Arbitrator shall have such power to administer oaths or affirmations and to conduct the proceedings as the rules of court and this order shall provide. The Chief Arbitrator shall have additional powers as set forth herein in Section 7 above.

G. The hearing shall be conducted by all of the arbitrators, but a majority may determine any question and render a final decision.

H. The Florida Evidence Code shall apply to all proceedings under this section.

I. An appeal shall be taken to the circuit court and shall be limited to review on the record and not *de novo* of:

(1) alleged failures of the arbitrators to comply with the applicable rules of procedure or evidence;

(2) alleged bias, partiality, or misconduct by an arbitrator prejudicing the rights of any party;

(3) whether the decision reaches a result contrary to the Constitutions of the United States or of the State of Florida.

The Harmless Error Doctrine shall apply in all appeals. No further review shall be permitted unless a constitutional issue is raised.

If no appeal is taken in the required time period, then the decision shall be referred to the presiding judge in the case; or if one has not been assigned, then one will be assigned by the Chief Judge. The judge 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.

J. The provisions for court-annexed non-binding arbitration contained herein shall also be applicable to binding arbitration to the extent such provisions are not in conflict with those provisions hereinabove stated, or the statutes or rules pertaining thereto.

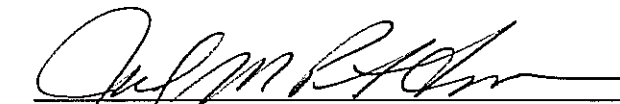
11. Costs of Non-Binding Arbitration. The parties shall be responsible for the compensation of the arbitrator(s) at the rate set forth in the order referring the case to non-binding arbitration. Payment shall be made prior to the arbitration directly to the arbitrator. Compensation for arbitrators shall be assessed at a rate specified in section 44.103, Florida Statutes (1997), as it may from time to time be amended, or as agreed by the parties or any party may agree to pay the entire compensation. The arbitrator(s) may tax the fee as costs in any award.

12. Costs of Binding Arbitration. In all cases where the parties to the dispute agree to submit the claim to binding arbitration, the arbitrators shall be compensated by the parties according to their written agreement, but not less than the amount specified in section 44.104, Florida Statutes (1997).

13. **Majority Decision.** In binding and non-binding arbitration when three arbitrators are appointed, the decision of two shall be the decision of the panel.

14. **Application.** This Administrative Order shall apply to the judges assigned to Bay County, Florida, and to counsel, parties, and arbitrators arbitrating within Bay County, Florida.

DONE AND ORDERED in Chambers at Panama City, Bay County, Florida, this 23
day of JUNE, 1999



Judy M. Pittman, Chief Judge

Michael C. Overstreet, Civil/Family Law Administrative Judge

