

IN THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR THE STATE OF FLORIDA

IN RE: COURT-ORDERED ARBITRATION
IN CIRCUIT AND COUNTY CIVIL
CASES

ADMINISTRATIVE ORDER
NO. 1.15

WHEREAS, Florida Statute §44.103, permits a presiding Civil Circuit or County Judge to refer civil cases to arbitration without the consent of the parties, in much the same way cases are referred to mediation; and

WHEREAS, Rule 1.810(a), Florida Rules of Civil Procedure, requires the Chief Judge, or the Chief Judge's designee, to maintain a list of qualified persons who have agreed to serve within the circuit as arbitrators; and

WHEREAS, Rules 11.010 and 11.020, Florida Rules for Court-Appointed Arbitrators, require, with certain exceptions, arbitrators to be members of The Florida Bar and to complete a training program approved by the Supreme Court of Florida; and

WHEREAS, Rule 1.820(b)(1), Florida Rules of Civil Procedure, requires the Chief Judge to set procedures for determining the time and place of arbitration hearings and authorizes the Chief Judge to establish any other procedures for the expeditious and orderly operation of arbitration hearings to the extent that such procedures are not in conflict with any rules of court; and

WHEREAS, Rule 1.810(b), Florida Rules of Civil Procedure, requires the Chief Judge to establish the compensation for arbitrators subject to any limitations of Florida Statute §44.103(3);

Now, therefore, pursuant to the authority vested in the Chief Judge by Rule 2.215 of the Florida Rules of Judicial Administration, and for the purpose of formally memorializing the established procedures utilized within the Twentieth Judicial Circuit,

It is hereby **ORDERED** as follows:

1. The Chief Judge of the Twentieth Judicial Circuit, in conjunction with the Administrative Office of the Courts' Mediation/Arbitration Department shall create a list of persons qualified to serve as arbitrators, which shall be maintained by the Administrative Office of the Courts' Mediation/Arbitration Department.

FILED

JUN 13 2013

LEE CO. FLORIDA
CLERK OF COURTS
BY _____ D.C.

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2. To be qualified as an arbitrator, a person must be a member of the Florida Bar for five (5) years and must comply with the qualification and training requirements set forth in Rules 11.010, 11.020, and 11.110, Florida Rules for Court-Appointed Arbitrators, unless otherwise agreed by the parties. Rule 11.010, Florida Rules for Court-Appointed Arbitrators, provides that persons who are not members of The Florida Bar may serve as arbitrators only on an arbitration panel and then only upon the written agreement of all parties.

3. Written procedures for becoming a court-appointed arbitrator shall be maintained by the Administrative Office of the Courts' Mediation/Arbitration Department. A person interested in being listed as an arbitrator may contact the Administrative Office of the Courts' Mediation/Arbitration Department, to obtain an application and shall deliver a completed application to the Administrative Office of the Courts' Mediation/Arbitration Department. Upon review of the application, the Chief Judge or the Chief Judge's designee, shall determine if the applicant is qualified and, if so, shall add the applicant to the list of qualified arbitrators. The list of qualified arbitrators shall be designated as the Twentieth Judicial Circuit's List of Qualified Arbitrators and shall be made available to all judges of the circuit.

4. Pursuant to Florida Statute §44.103 and Rules 1.700(a), 1.800, and 1.820(b)(1), Florida Rules of Civil Procedure, the Twentieth Judicial Circuit hereby establishes these procedures to facilitate the use of court-ordered non-binding arbitration in all, or any part, of a contested civil action filed in either Circuit or County Court, except as prohibited by law or by Rule 1.800, Florida Rules of Civil Procedure.¹ The parties to any matter pending before the Court may agree to select their own arbitrator(s); however, in the absence of an agreement by

¹ In accordance with Rule 1.800, Fla. R. Civ. P., under no circumstances may bond estreatures, bond validations, petitions for habeas corpus or other extraordinary writs, or contempt actions be referred to arbitration.

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the parties, an arbitrator (or arbitrators) shall be selected by the presiding Judge, or the presiding Judge's designee, from the Twentieth Judicial Circuit's List of Qualified Arbitrators.

5. Upon deciding that a case will be referred to non-binding arbitration, the presiding Judge shall enter an "Order/Referral to Nonbinding Arbitration," which shall (1) establish a deadline for conducting the arbitration, (2) afford the parties ten days to select a mutually acceptable arbitrator(s), (3) establish Plaintiff's counsel as lead attorney for the purpose of coordinating, scheduling and providing notice of the arbitration, (4) provide instructions as to how the parties are to proceed if they do not agree to an arbitrator(s), and (5) provide notice to all parties of the procedures applicable to the arbitration hearing. If the parties do not agree to an arbitrator(s), Plaintiff's counsel shall provide written notification to the Court and to the Administrative Office of the Courts' Mediation/Arbitration Department within fifteen days of entry of the "Order/Referral to Nonbinding Arbitration." Upon receipt of such written notification, the Court will enter an "Order for Non-Binding Arbitration," which will name an arbitrator(s) selected by the Court from the Twentieth Judicial Circuit's List of Qualified Arbitrators and will schedule the time and location of the arbitration. The Mediation/Arbitration Department will serve as coordinator for the arbitration.

6. The arbitration hearing shall be conducted in the county in which the action is pending, unless otherwise agreed by the parties.

7. Arbitration shall be conducted in accordance with the rules of practice and procedure adopted by the Supreme Court of Florida, in accordance with all laws of the State of Florida, in accordance with all orders and directives as may be approved by the Chief Judge, and in accordance with the written procedures maintained by the Administrative Office of the Courts' Mediation/Arbitration Department and attached hereto.

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8. Copies of all written procedures, applications, and sample orders, as well as the Twentieth Judicial Circuit's List of Qualified Arbitrators, shall be on file in the Administrative Office of the Courts' Mediation/Arbitration Department, and shall be posted on the official website for the Twentieth Judicial Circuit.

9. Arbitrators in the Twentieth Judicial Circuit conducting court-ordered non-binding arbitration shall be compensated at a rate which shall not exceed \$200.00 per hour, unless otherwise agreed by the parties, and shall be entitled to a minimum fee of \$400.00, even if the arbitration hearing does not exceed one hour. The arbitration fee shall not exceed \$1,500.00, per day. At a minimum, \$200.00 for the first hour of arbitration shall be paid to each arbitrator no later than ten (10) days prior to commencement of the arbitration hearing; the balance, if any, shall be paid at the conclusion of said hearing. Fees shall be equally divided between the parties. However, if any party cancels with less than 48 hours notice or fails to appear, each arbitrator shall be entitled to the \$400.00 minimum fee, and the party or parties who cancelled or failed to appear shall be responsible for the cost.

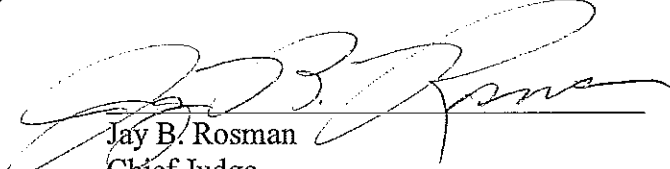
10. In the event that a party is found to be indigent pursuant to Florida Statute § 57.082, the use of state funds is authorized by Florida Statute § 44.103(3) to partially or fully compensate the arbitrator(s) according to the party's present ability to pay. However, prior to approving the use of state funds to reimburse an arbitrator, the Judge 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, in such

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instances when a party is found to be indigent, qualified individuals who have volunteered their time to serve as arbitrators shall be appointed.

11. To the extent that any provision of this Administrative Order may be construed as being in conflict with any law, statute, or rule, the law, statute, or rule shall prevail.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida this
12 day of June, 2013.


Jay B. Rosman
Chief Judge

History. – New.

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**TWENTIETH JUDICIAL CIRCUIT
PROCEDURES FOR NON-BINDING ARBITRATION**

The following procedures shall apply to non-binding arbitration. See also, Florida Statutes, Section 44.103 and Florida Rule of Civil Procedure 1.820 (“Hearing Procedures for Non-Binding Arbitration”):

(1) Cases referred to arbitration shall be assigned to an arbitrator or to a panel of arbitrators. In the absence of an agreement by the parties as to the designation of the arbitrator(s), the Court shall determine the number of arbitrators and designate the arbitrators. In the case of a panel, one of the arbitrators shall be appointed or designated as the chief arbitrator.

(2) The arbitration fees shall be equally divided and paid by the parties. “At no time may an arbitrator charge more than \$1,500.00 per diem, unless all of the parties agree otherwise.” Florida Statutes, Section 44.103(3). The arbitrator(s) shall be compensated pursuant to Florida Statutes, Section 44.103(3), or as otherwise agreed to by the arbitrator(s) and the parties.

(3) All parties, including non-counsel representatives of corporate parties with full authority to settle the matter, must attend the arbitration hearing. If insurance is involved, whether or not named as a party, the insurance company shall have a representative present with full authority to resolve the case. Parties may be represented by counsel; however, counsel shall not be considered a representative of the party for purposes of this section. Hearings may continue without the presence of counsel. If a party fails to attend the scheduled hearing, the chief arbitrator may proceed with the hearing, and the arbitrator(s) shall render a decision based upon the facts and circumstances as presented by the parties present. Failure to attend the hearing may also result in the Court applying sanctions including the striking of pleadings or portions thereof, the awarding of fees and costs and/or contempt proceedings.

(4) The parties shall submit case summaries to each arbitrator at least 10 days prior to the hearing.

(5) “[The] 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 shall be kept to a minimum and facts and issues shall be presented to the arbitrator(s) primarily through documents and the statements and arguments of counsel.” Florida Statutes, Section 44.103(4).

(6) Any party may have a record and transcript made of the arbitration hearing at the party’s expense.

(7) Arbitration shall 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. No extension of time shall be for a period exceeding 60 days from the date of the first arbitration hearing. Upon the completion of the arbitration process, the arbitrator(s) shall render a decision. In the case of a panel, a decision shall be by a majority vote of the panel.

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(8) If the decision establishes or otherwise clearly demonstrates a party to be the prevailing party, the decision should also include a recommendation as to the assessment of costs, and the reasonable amount of those costs. While the issue of attorney's fees, if appropriate, is normally reserved for the trial court, the parties can waive this right and have the arbitrator(s) render a finding on entitlement and/or the reasonable amount of attorney's fees. Such waiver should be in writing and signed by the respective parties or their attorneys. See, generally, Turnberry Associates v. Service Station Aid, Inc., 651 So. 2d 1173 (Fla. 1995).

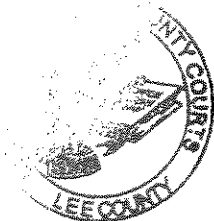
(9) Within 10 days of the final adjournment of the arbitration hearing, the arbitrator(s) shall provide the parties with a written decision pursuant to Florida Statutes, Section 44.103(5). The arbitration decision may set for the issues in controversy, findings of fact and conclusions of law. The original written decision and the original of any transcripts shall be sealed and filed with the Clerk at the time the parties are notified of the decision.

(10) Any party may file a motion for trial de novo, pursuant of Florida Statutes, Section 44.103(5). "An arbitration decision shall be final if a request for trial de novo is not filed within the time provide by the rules promulgated by the Supreme Court... If no request for trial de novo is made within the time provided, the decision shall be referred to the presiding judge, who shall enter such orders and judgments as may be required to carry out the terms of the decision." Florida Statutes, Section 44.103(5); Florida Rules of Civil Procedure, Rule 1.820(h).

(11) If a trial de novo is requested and the judgment at trial is not more favorable than the decision of the arbitrator(s), the Court may assess the party requesting the trial, the other party's expenses, costs and fees, including reasonable attorney's fees, if the requirements under Florida Statutes, Section 44.103(6) are met.

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I certify this document to be a true and correct copy of the record on file in my office,
Linda Doggett, Clerk Circuit/
County Court, Lee County, FL
Dated: 6-13-13
By Am
Deputy Clerk



STATE OF FLORIDA, COUNTY OF LEE
FILED FOR RECORD
This 13 Day of JUNE 2013 Recorded In CIRCUIT
Book 57 Page 71-77 and Record Verified.
LINDA DOGGETT By Am
Clerk Circuit Court Deputy Clerk