

RE: VOLUNTARY TRIAL RESOLUTION GUIDELINES

As Section 44.104, Florida Statutes, authorizes the use of voluntary trial resolution in certain civil disputes; and

In order to assist counsel and to provide procedures for voluntary trial resolution proceedings when such proceedings are scheduled in a court facility or when the Court has to appoint the trial resolution judge, the following guidelines are provided:

1. All civil disputes, including probate disputes, may be resolved by voluntary trial resolution, except the following:
 - a. Cases in which a constitutional issue is involved;
 - b. Cases which involve child custody, visitation, or child support;
 - c. Disputes which involve the rights of a third party not a party to the voluntary trial resolution when the third party would be an indispensable party if the dispute were resolved in court; or
 - d. Disputes which involve the rights of a third party who is not an indispensable party but the third party notifies the trial resolution judge that (1) it would be a proper party if the dispute were resolved in court; (2) it intends to intervene in the action in court; and (3) it does not agree to proceed under the trial resolution section.
2. In the event the Court has to appoint the trial resolution judge, the compensation of the trial resolution judge shall be subject to the approval of the judge making the appointment.
3. All attorneys are encouraged to provide any parties considering the use of voluntary trial resolution with a copy of the document, "Information for parties Considering the use of Voluntary Trial Resolution," attached hereto as Appendix A.
4. In the event the trial resolution proceeding is to be scheduled in a court facility, the trial resolution judge shall notify the judicial assistant and inform him or her of:
 - i. The expected length of the proceeding;
 - ii. Whether jurors will be required for the proceeding; and
 - iii. Whether any other services are requested of the Court.
5. The judicial assistant shall then notify the Administrative Office of the Courts, which shall be responsible for scheduling the courtroom, notifying the Sheriff regarding the need for bailiffs, and notifying the office of the Clerk of Courts regarding required personnel and jurors.
6. When notified, the Clerk of Court and the Sheriff shall provide the same personnel and services for a trial resolution judge as are provided for a judge of the circuit.
7. All proceedings involving a trial resolution judge which occur in any courthouse or other public facility shall be open to the public.
8. If a controversy is submitted to voluntary trial resolution prior to a lawsuit being filed, upon request of the parties for an order or judgment to carry out the final decision, the Clerk of Court shall assign the case to a circuit civil division judge just as it would for any other newly filed case, including any appropriate filing charges.

APPENDIX A

IMPORTANT INFORMATION FOR PARTIES CONSIDERING THE USE OF VOLUNTARY TRIAL RESOLUTION

Section 44.104, Florida Statutes, authorizes the use of a procedure known as Voluntary Trial Resolution (VTR) in most civil disputes. VTR allows the parties to enter into an agreement to submit their dispute to a trial resolution judge they hire in lieu of litigation of the issues involved. While this procedure can expedite the resolution of the dispute and allow the parties greater flexibility with scheduling, there are significant differences between VTR and traditional litigation with which every attorney should be familiar before electing to use VTR.

1. First, VTR may not be used if a case involves any constitutional issues or dispute involving child custody, visitation or child support; or disputes involving the rights of a third party not a party to the VTR when
 - a) The third party would be indispensable parties in traditional litigation, or
 - b) The third party notifies the trial resolution judge that it would be a proper party in the traditional litigation, that it intends to intervene in the action, and that it does not agree to proceed with a VTR.
2. Second, the parties must compensate the trial resolution judge according to their agreement. In the event the court must appoint the trial resolution judge, the compensation of the trial resolution judge is subject to the approval of the judge making the appointment. The trial resolution judge may be any attorney who has been a member in good standing of the Florida Bar for more than five years.
3. Third, While the parties may also select a senior judge to serve as a trial resolution judge, using a senior judge in a VTR proceeding does not convert it to a traditional litigation proceeding. Instead, the senior judge serves as a trial resolution judge just as any other attorney would, and the proceeding remains a VTR proceeding subject to VTR provisions.
4. Finally, and most importantly, the right to appeal a decision of a trial resolution judge is significantly curtailed. Unless a constitutional issue is raised the parties are entitled to only one level of appeal. Further, they may not appeal findings of fact unless otherwise permitted by law, and the harmless error standard applies in all appeals.