

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

**69J-176.022 Mediation of Bodily Injury and Property Damage Claims.**

(1) No Change.

(2) Definitions. The following definitions shall apply for purposes of this rule:

(a) ~~“Complainant” “Applicant”~~ refers to the party ~~requesting~~ ~~demanding~~ mediation of a claim ~~prior to the institution of litigation.~~

(b) “Complete request for mediation” means that the ~~complainant applicant~~ has ~~requested~~ ~~demande~~d mediation by filing Form ~~DFS-I0-510, “Automobile Mediation Request Form,” rev.08/15~~ ~~DFS H2- 510~~ with ~~the Department a~~-response to each query above the applicant’s signature line and proper payment attached thereto for the amount ~~specified on the Form,~~ and the respondent ~~and complainant have~~ ~~has~~ paid their share of the costs of mediation pursuant to paragraph (3)(b) below.

(c) No Change.

~~(d) “Natural person” means human being.~~

~~(d) (e)~~ “Respondent” means the party not ~~initiating the request for~~ ~~initially requesting~~ mediation.

~~(e) (f)~~ “Service office” means a designated office of the ~~Bureau of Consumer Assistance, Division of Consumer Services,~~ Department of Financial Services.

~~(3) Service Offices. For the purposes of designating mediators and for disposition of mediation conferences the State of Florida shall be divided among the following designated service offices:~~

~~(a) Daytona Beach Service Office shall be composed of the following counties: Flagler, Marion, Putnam, and Volusia.~~

~~(b) Fort Lauderdale Service Office shall be composed of Broward county.~~

~~(c) Fort Myers Service Office shall be composed of the following counties: Charlotte, Collier, DeSoto, Glades, Hendry, Highlands, and Lee.~~

~~(d) Jacksonville Service Office shall be composed of the following counties: Alachua, Baker, Bradford, Clay, Columbia, Dixie, Duval, Gilchrist, Hamilton, Lafayette, Levy, Nassau, St. Johns, Suwannee, and Union.~~

~~(e) Miami Service Office shall be composed of Dade and Monroe counties.~~

~~(f) Orlando Service Office shall be composed of the following counties: Brevard, Citrus, Lake, Orange, Osceola, Seminole, and Sumter.~~

~~(g) Pensacola Service Office shall be composed of the following counties: Bay, Calhoun, Escambia, Gulf,~~

~~Holmes, Jackson, Okaloosa, Santa Rosa, Walton, and Washington.~~

~~(h) St. Petersburg Service Office shall be composed of the following counties: Manatee, Pinellas, and Sarasota.~~

~~(i) Tallahassee Bureau of Consumer Assistance Service Office shall be composed of the following counties: Gadsden, Franklin, Jefferson, Leon, Liberty, Madison, Taylor, and Wakulla.~~

~~(j) Tampa Service Office shall be composed of the following counties: Hardee, Hernando, Hillsborough, Pasco, and Polk.~~

~~(k) West Palm Beach Service Office shall be composed of the following counties: Indian River, Martin, Okeechobee, Palm Beach, and St. Lucie.~~

~~(3) (4) Request for Mediation.~~

~~(a) A complainant requesting An applicant demanding mediation shall file with the Department a request for mediation on Form DFS-I0-510, "Automobile Mediation Request Form," rev. 08/15 DFS-H2-510, "Request for Mediation," rev. 10/92, which is hereby adopted herein and incorporated by reference. This Form may be obtained online at the following website: [http://www.myfloridacfo.com/Division/Consumers/Mediation/documents/am\\_DFS-I0-510.pdf](http://www.myfloridacfo.com/Division/Consumers/Mediation/documents/am_DFS-I0-510.pdf) and filed with the Department by emailing it to [Mediation@MyFloridaCFO.com](mailto:Mediation@MyFloridaCFO.com), faxing it to (850)488-6372, submitting it online at the following website: <https://apps.fldfs.com/ESERVICE/MediationInfo.aspx> or mailing it to from the Alternative Dispute Resolution Section Bureau of Consumer Assistance, Division of Consumer Services, Department of Financial Services, 200 East Gaines Street, Tallahassee, FL 32399-0300. A complete request for mediation shall be considered complete filed only when all costs of mediation are received by the Department. The Department shall notify the complainant applicant in writing within 5 business days of receipt of payment by the respondent or by telephone if a filed request for mediation does not constitute a complete request for mediation. Notice shall occur within a reasonable period of time after receipt of the incomplete request for mediation.~~

~~(b) The costs of mediation shall be \$200, and the insured and the insurer each pay \$100 to the Department as its share of the costs of mediation per party. These costs shall be specified on Form DFS H2-510 and shall be disbursed to the Department.~~

~~(c) Upon receipt of a request for mediation, the Department shall issue an invoice to the respondent, specifying the respondent's share in the costs of mediation. The respondent shall make payment on or before the due date which shall be indicated on the invoice, unless the provisions of paragraph (3)(e) are met. The due date shall be 21 20 days after the date of the invoice.~~

(d) All payments by the parties shall be made by certified check, money order, or insurance company check or draft made payable to the Department of Financial Services.

(e) If a respondent objects to the mediation conference and refuses to participate, the respondent must, on or before the due date of the invoice, notify the Department in writing of its ~~their~~ objection and refusal and specifically state the reasons therefor. These reasons shall be deemed confidential and exempt from the provisions of subsection Section 119.07(1), F.S., and shall not be publicly disclosed without the written consent of all parties to the dispute. Any research or evaluation effort directed at assessing program activities or performance shall protect the confidentiality of such information.

~~(4) (5)~~ Mediators.

(a) Mediator Selection. Upon receiving a complete request for mediation, the Department shall randomly select from the Department's list a mediator to conduct the mediation conference. The Department shall notify the parties of the selected mediator via e-mail. Each party may once reject the selected mediator by notifying the Department. Any rejection of a mediator must be in writing and mailed to the Alternative Dispute Resolution Section, Division of Consumer Services, Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-4212 or e-mailed to Mediation@MyFloridaCFO.com and received by the Department within three (3) business days of the date of the written notice of the mediator selection. If a mediator has not been rejected within three (3) business days of the date of the written notice of the mediator selection, the Department shall notify the mediator of his or her selection via e-mail. The mediator shall log into the Department's Alternative Dispute Resolution Management System at <https://apps.fldfs.com/mediationmanager/Login.aspx> to view the names and addresses of the parties and their known representatives, their phone numbers (if known), the Department's file number, the date of the request for mediation, and information that the mediation is to occur within twenty-one (21) days of the date of assignment to the mediator. The mediator will have three (3) business days from the date of notification by the Department to accept or reject the selection. The acceptance or rejection of the selection by a mediator must be completed through the Department's Alternative Dispute Resolution Management System at <https://apps.fldfs.com/mediationmanager/Login.aspx> within three (3) business days of the date of the written notice of the mediator selection. If the mediator rejects the selection or fails to accept the selection within three (3) business days, then the Department shall randomly select another mediator. A mediator may refuse to conduct a particular mediation. Appointment. The Bureau of Agent and Agency Licensing, Department of Financial Services, shall appoint as mediators those persons who meet the qualifications set forth in Section 627.745(3)(b), F.S. Persons

wishing to be appointed as mediators shall submit their qualifications to the Bureau of Agent and Agency Licensing, Department of Financial Services, 200 East Gaines Street, Tallahassee, FL 32399-0300, on Form DFS H2-591, "Application for Appointment as a Mediator," rev. 1/93, which is hereby adopted and incorporated by reference.

~~(b) List of Appointed Mediators. The Bureau of Agent and Agency Licensing, Department of Financial Services, shall maintain a list of all appointed mediators, which list shall include the mediator's names, addresses, telephone numbers, social security numbers, date of entry to the list, and the counties in which the mediators are permitted to conduct mediation conferences. The Department shall assign a mediator number to each appointed mediator.~~

~~(c) Mediator Assignment To Service Offices. Mediators shall be assigned to the service offices serving the counties in which they are qualified and willing to mediate. The Department shall maintain a list of all appointed mediators assigned to each service office. Mediators shall be added to each service office list in the order in which they are appointed.~~

~~(d) Mediator Selection. Upon receipt of a complete request for mediation, the Department shall select a mediator from a list of mediators assigned to the appropriate service office. Upon the selection of a mediator, the Department shall notify the parties and the selected mediator in writing of the selection. Each party may once reject the selected mediator. Any rejection of a mediator must be in writing and received by the Department within 10 days of the date of the written notice of the mediator selection. If two mediators have been rejected, the third selected mediator may not be rejected. A mediator may refuse to conduct a particular mediation. If there are no mediators appointed or designated to conduct mediation conferences which correspond to the service office a mediator shall be designated as randomly determined by the Department.~~

~~(b) (e) Grouping of Assignments. Multiple requests Requests for mediation involving the same claim received from applicants which correspond to a service office will, if feasible, be grouped together and assigned to a single mediator. A mediator will be assigned a maximum of four mediation conferences under a single assignment. Group mediation conferences shall be set in sequence by the Department at the service office.~~

~~(c) (f) Procedure and Conduct. All mediation conferences shall be conducted in accordance with the Florida Rules for Certified and Court-Appointed Mediators, as set forth in rules 10.020-10.290, Florida Rules of Civil Procedure, and other consistent rules of conduct as promulgated by the Supreme Court of Florida. Mediators shall have the same responsibilities to the Department as they have to the courts under the Florida Rules for Certified and Court-Appointed Mediators. All mediators acting under this rule shall at all times conduct themselves in a~~

professional manner consistent with the standards of their respective professions and the standards for mediators which may be adopted from time to time by the Supreme Court of Florida. The Florida Rules for Certified and Court-Appointed Mediators shall be read in a manner consistent with this rule and any conflict between this rule and the Florida Rules for Certified and Court-Appointed Mediators shall be resolved in favor of this rule. The mediator may communicate privately with the person representing either side of the dispute during a mediation.

(d) ~~(g)~~ Complaints; Discipline. Complaints concerning a mediator shall be written and e-mailed to [Mediation@MyFloridaCFO.com](mailto:Mediation@MyFloridaCFO.com) or mailed to the Alternative Dispute Resolution Section, Division of Consumer Services ~~submitted to the Bureau of Consumer Assistance~~, Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-0300 ~~0324~~. The Alternative Dispute Resolution Section ~~Bureau of Consumer Assistance~~ shall review all alleged instances of dishonest, incompetent, fraudulent, or unethical behavior on the part of a mediator and all instances in which the mediator allegedly failed to promptly and completely respond to proper requests from the Department and all instances in which the actions or failure to act on the part of the mediator violate this rule or standards set forth in this rule or are counter to the intent and purpose of this mediation program or this rule or Section 627.745, F.S. In such instances, the Department shall institute proceedings in accordance with Chapter 120, F.S., to revoke the appointment of any mediator whom the Alternative Dispute Resolution Section ~~Bureau of Consumer Assistance~~ finds has acted in a manner which shows that individual to be unsuited to be a mediator in this program.

~~(h) Invoice. Mediator shall bill the Department for their services associated with the automobile claim mediation conference by filing Form DFS H2-1121, (rev. 11/99) "Invoice", which is hereby adopted herein and incorporated by reference. This form may be obtained from the Bureau of Consumer Services Assistance, Division of Consumer Services, Department of Financial Services, 200 East Gaines Street, Tallahassee, FL 32399-0300.~~

(5) ~~(6)~~ Mediation Conference.

(a) Location. The mediation conference shall be held at a reasonable location specified by the mediator within the insured's county of residence, unless all parties agree otherwise. In times of declared disaster, the Department shall assign the mediation location and notify the mediator of same, if the Department determines such action is necessary to facilitate and expedite the mediation process. The Department shall make available various conference locations throughout the state for possible use, if the Department determines such action is necessary to facilitate and expedite the mediation process. Before scheduling a mediation conference, the mediator may contact the Alternative Dispute Resolution Section to determine the availability of office facilities to accommodate the

~~mediation conference. If the parties determine that the assigned conference location is inconvenient or impractical, the parties and mediator may agree to conduct the mediation conference at an alternative location. If the Department has assigned a location, the Department must also agree to the alternate location. If the applicant is a natural person, the mediation conference shall be held at the service office which corresponds to the applicant's county of residence. If the applicant is not a natural person, then the mediation conference shall be held at the service office which corresponds to the respondent's county of residence. If neither party is a natural person, then the mediation conference may be held at a location agreed to by the mediator and the parties. Before scheduling a mediation conference the mediator will contact the service office administrator to determine the availability of service office facilities to accommodate the mediation conference. If no facilities are available at the service office for the particular mediation conference then the service office administrator shall designate an alternative location for the mediation conference. If the parties determine that the assigned service office is inconvenient or impracticable, the parties and the mediator may agree to conduct the mediation conference at an alternative location. The mediator will notify the parties and the Department of the exact time, date, and location of the conference.~~

(b) Telephonic Mediation. Upon written consent of all parties, the mediation conference may be held by telephone if an in-person meeting of the parties and the mediator is inconvenient. The mediator shall notify the Department ~~shall be advised~~ in writing of the telephone mediation. ~~The person or entity requesting that the mediation conference be held by telephone shall pay all telephone toll charges.~~

(c) Timing and Continuances. The mediation conference shall be held within 45 days after receipt by the Department of a complete request for mediation. Upon application by any party to the mediator for a continuance, the mediator shall, for good cause shown or if neither party objects, grant a continuance and shall notify all parties of the date and place of the rescheduled conference. If the applicant demonstrates to the mediator, on Form DFS-IO-510, "Automobile Mediation Request Form," rev. 08/15 ~~DFS H2-510~~, the need for an expedited mediation conference due to an undue hardship, the conference shall be conducted at the earliest date convenient to all of the parties and the mediator.

(d) Attendance. The insured and the insurer shall attend the mediation conference, have full knowledge of the facts of the dispute, and be fully authorized to make an agreement to completely resolve the claim. All corporate parties who are complainants or respondents shall be represented at the conference by a corporate representative who has full knowledge of the facts of the dispute and is fully authorized to make an agreement to completely resolve the dispute. An insurer will be deemed to have failed to appear if the insurer's representative lacks authority

~~to settle the full value of the claim. All natural persons who have an interest in the claim upon which the mediation conference is based shall attend the mediation conference and be fully authorized to make an agreement to completely resolve the claim. All corporate parties to the claim upon which the mediation conference is based shall attend the conference in the person of a corporate representative who has full knowledge of the facts of the claim and is fully authorized to make an agreement to completely resolve the claim.~~

(e) No Change.

~~(6)~~ (7) Disbursement of Funds. The funds paid by the parties shall be disbursed as follows:

(a) through (d) No Change.

(e) Any disputes regarding the amount of disbursement of funds shall be resolved by the Department ~~through its Chief, Bureau of Consumer Assistance, Division of Consumer Services.~~

(f) and (g) No Change.

~~(7)~~ (8) Post-Mediation.

(a) At the conclusion of the mediation conference, the mediator shall report to the Department the results of the mediation using Form DFS-I4-2169, "Mediation Disposition Form," eff. 11/15 ~~the space provided on~~. Failure of the mediator to promptly report shall be grounds for review of the mediator's appointment.

(b) No Change.

*Rulemaking Authority 624.308(1), 627.745(4) FS. Law Implemented 624.307(1), 626.171, 627.745 FS. History—New 3-14-93, Amended 8-6-98, 9-17-01, Formerly 4-176.022, 69B-176.022, Amended \_\_\_\_\_.*