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Changes to Florida's Mediation Rule Will Affect Insurers

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On November 3, 2011, the Florida Supreme Court amended Florida Rule of Civil Procedure 1.720 pertaining to mediation procedures. The amendment, which becomes effective January 1, 2012, significantly impacts insurers' mediation obligations. Changes to the rule are summarized below:

1. Unless permitted by Court Order or stipulation, a party and the party's counsel must be physically present with a representative of the insurer for any insured party;
2. The insurer's representative may not be the insurer's outside counsel;
3. The insurer's representative who appears must have full authority to settle, without further consultation, in an amount up to the amount of the plaintiff's last demand or the policy limits, whichever is less;
4. Ten days before the mediation conference, each party must file and serve a written notice identifying the persons who will attend the mediation, including the insurance representative, and confirming that the parties who will be attending the mediation have the authority required by the rule;
5. If a party and the required representatives fail to appear at the mediation conference, the court shall impose sanctions, including mediation fees, attorneys' fees, and costs; and
6. Failure to file the confirmation of authority or failure of the identified representatives to appear at the mediation shall create a rebuttable presumption that the party has failed to appear.

This rule change will require significant pre-mediation preparation by insurers. An insurer must identify the appropriate representative at least 10 days before the mediation conference. That representative must have full policy limit authority or full authority up to the amount of the last demand, whichever is less. Committee notes to the rule amendment state: "First, the party representative must be the final decision maker with respect to all issues presented by the case in question. Second, the party representative must have the legal capacity to execute a binding agreement on behalf of the settling party."

The Rule does not specifically address issues relating to multiple layers of insurance.

Insurers are encouraged to discuss the new mediation rule with counsel and implement processes to ensure that the rule's requirements will be satisfied. Moreover, before participating in mediation, insurers must confer with counsel regarding the authority limits of the insurer's representative.

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