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Litigation

1 Court system

What is the structure of the civil court system?

The Florida Constitution vests judicial power in a Supreme Court, district courts of appeal, circuit courts and county courts. Florida is divided into 20 judicial circuits, each composed of at least one county. Those circuits are organised into five appellate districts composed of multiple counties.

The Florida Supreme Court, the court of last resort in Florida, is composed of seven justices. The jurisdiction of the Florida Supreme Court is primarily set forth in the Florida Constitution, and includes situations of mandatory review (eg, death sentences, district court decisions declaring a state statute or provision of the state constitution invalid) and discretionary review (eg, district court decisions that expressly declare valid a state statute or conflict with prior decisions of a district court of appeal or the Florida Supreme Court on the same issue). The Florida Supreme Court is also responsible for the administration of Florida's judicial system, including resolving disciplinary issues with the bench and bar, and is empowered with rule-making authority for the practice and procedure of law in all state courts.

The district courts of appeal have jurisdiction to hear civil and criminal appeals from final judgments or orders of trial courts and have the power of direct review of administrative actions. Three judges must consider a case before a district court of appeal; the concurrence of two is necessary for a decision. Occasionally, a district court sits en banc, in which case a majority must endorse the decision.

Circuit courts are commonly referred to as the courts of general jurisdiction, because most civil and criminal cases originate at this level. On the civil side, circuit courts hear, among other cases, disputes involving more than US$15,000, tax disputes and actions concerning real property. The number of judges in each circuit is determined by law and is based on the population and caseload of the circuit.

Some Florida circuit courts have created special divisions dedicated exclusively to complex business disputes. The Ninth and Eleventh Judicial Circuits (which include Orlando and Miami, respectively) each have a 'Complex Business Litigation Section'. This section handles civil cases in specified legal areas and, with certain exceptions, requires that the amount in controversy exceed US$75,000.

County courts are courts of limited jurisdiction, hearing disputes involving US$15,000 or less, traffic offences, evictions, misdemeanours and violations of municipal and county ordinances. As with the circuit courts, the number of judges on the county courts depends on the population and caseload of each county.

Civil litigation may also occur in the federal courts in Florida, but because federal courts have limited jurisdiction, they may only hear certain claims. As in all states, some claims filed in a Florida state court may be 'removed' to the federal court if there is diversity of citizenship and the amount in controversy exceeds US$75,000, or if the claim involves a federal question.

Pursuant to the Class Action Fairness Act of 2005, in the case of class actions filed after 18 February 2005, federal courts may hear a claim under its diversity jurisdiction if the amount in controversy exceeds US$5 million, at least one-third of the plaintiff class members are not citizens of the forum state, and at least one class member and one defendant are from different states. A federal court may have discretion to decline jurisdiction if less than two-thirds of the class members are from the forum state.

2 Judges and juries

What is the role of the judge and the jury in civil proceedings?

Judges must decide controversies fairly and impartially, consistent with established rules of law. In jury trials, the judge is responsible for deciding questions of law presented at the trial and for stating the law to the jury. The jury is responsible for deciding issues of fact. If there are no material issues of fact, the judge may decide the case on his or her own. In bench trials, the judge decides issues of law and fact. Although they normally do not do so, judges may also question a witness to clarify testimony, or may call witnesses, whom all parties may then cross-examine.

3 Limitation issues

What are the time limits for bringing civil claims?

The Florida Statutes prescribe time limits for the commencement of various civil actions. For example:

- breach of written contract: five years;
- negligence: four years;
- intentional torts: four years;
- products liability: four years;
- property damage: four years;
- actions not covered by specific statutory provision: four years;
- wrongful death: two years; and
- specific performance of contract: one year.

Limitations for other actions are detailed in the Florida Statutes. In Florida, parties may not include a contractual provision that fixes the period of time within which an action arising out of the contract may be begun at a time less than the one provided by the applicable statute of limitations.

4 Pre-action behaviour

Are there any pre-action considerations the parties should take into account?

Parties contemplating a civil action should determine whether it is appropriate to file the action given the statutes and agreements on which the action is based. Prior to filing, parties should determine whether the action belongs in state or federal court, as well as the proper venue of the action. Additionally, some types of actions (eg, actions for medical malpractice) require specific pre-suit investigation and notice. An attorney should verify whether any such pre-suit requirements apply to the contemplated claims before filing suit.

Under Rule 1.290 of the Florida Rules of Civil Procedure, it is possible to take depositions before the initiation of a civil action. The moving party seeking a pre-action deposition must show:

- that the movant expects to be a party to an action cognisable in a court of Florida, but is presently unable to bring the action or cause the action to be brought;
- the subject matter of the expected action and the movant's interest in it;
- the facts which the movant desires to establish by the proposed testimony and reasons for desiring to perpetuate it;
- the names or descriptions of the expected adverse parties and their addresses, if known; and
- the names and addresses of the potential deponent and the substance of the testimony that the movant seeks to gain from that deposition.

5 Starting proceedings

How are civil proceedings commenced?

In Florida, a civil action commences when a complaint or petition is filed; ancillary proceedings commence when a writ is issued or when the party initiating the action files a pleading.

6 Timetable

What is the typical procedure and timetable for a civil claim?

After commencement of the civil action the plaintiff must serve the defendant with the initial process and pleading within 120 days of its filing. If this deadline is not met, the court will dismiss the action without prejudice unless the plaintiff can show good cause or excusable neglect for the failure to serve the defendant. Once the defendant is served, the defendant has 20 days in which to answer the complaint. Thereafter, any other pleading (ie, cross-claims, counterclaims, and third-party complaints) must be answered within 20 days. A defendant may bring responsible third parties into the action by filing a third-party complaint within 20 days of the defendant's answer; after that 20-day period, the defendant may still bring in a third party with leave of the court.

Under the Federal Rules of Civil Procedure, applicable when a civil action is filed in or removed to federal court, the defendant must also answer within 20 days of service and may assert a variety of defences to the action under Rule 12.

In general, the procedure is flexible – the Florida and Federal Rules of Civil Procedure give courts discretion to lengthen deadlines and parties are expected to confer with the court to determine how the action will progress. Many courts use case management conferences, at which the court will schedule important aspects of the civil action (eg, trial date, discovery deadlines).

7 Case management

Can the parties control the procedure and the timetable?

Yes. Rule 1.200 of the Florida Rules of Civil Procedure anticipates that parties will confer with each other and with the court to schedule trial procedures. In federal courts, there is significantly less leeway for the parties to control the timetable.

8 Evidence – documents

Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

Yes. Parties are required to preserve evidence once they have been made aware of the possibility of litigation. If a party destroys or fails to preserve evidence a court may sanction the party in pending litigation and the offending party may also be liable for the independent tort of intentional or negligent spoliation of evidence, or both.

According to Florida Rule of Civil Procedure 1.280, parties may obtain relevant, non-privileged documents through the discovery process, upon request from opposing parties. The methods available to obtain discoverable documents and other evidence include interrogatories, depositions, requests for admission, and requests for production. Absent such requests, however, parties do not have an affirmative duty to share relevant information.

9 Evidence – privilege

Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

Yes. Florida recognises an attorney-client privilege and work product doctrine. According to this privilege and doctrine, advice and communications with counsel, and documents created in preparation for litigation or at the direction of counsel, are privileged from production. The privilege applies to both in-house and outside counsel, both local and foreign.

Florida also recognises through a separate statue, the accountant-client privilege. This privilege provides that a client may refuse to disclose, and may prevent any other person from disclosing, the contents of confidential communications with an accountant, when such other person learned of the communications because they were made in the rendition of accounting services to the client.

Finally, Florida recognises several other statutorily privileged relationships. These include:

- a journalist's qualified privilege to refuse to disclose the identity of a source obtained while actively gathering news;
- a psychotherapist-patient privilege permitting a patient to refuse to disclose, and to prevent any other person from disclosing, confidential communications or records made for the purpose of diagnosis or treatment;
- a sexual assault counsellor-victim and domestic violence advocate-victim privilege, permitting a victim to refuse to disclose, and to prevent any other person from disclosing, confidential communications made by the victim to a sexual assault counsellor or a domestic violence advocate;
- a husband-wife privilege, permitting a spouse during or after the marital relationship to refuse to disclose, and to prevent another from disclosing, communications intended to be made in confidence between the spouses during the marital relationship; and
- a clergy privilege, permitting a person to refuse to disclose and to prevent another from disclosing, a confidential communication with a member of the clergy in his or her capacity as spiritual adviser.

10 Evidence – witnesses

Do parties exchange written evidence from witnesses and experts prior to trial?

Several rules of civil procedure permit parties to obtain written evidence from witnesses. For example, Florida Rule of Civil Procedure 1.320 allows parties to obtain the testimony of any person by deposition upon written questions. Similarly, Florida Rule of Civil Procedure 1.351 allows parties to compel the inspection of documents and other objects from non-party witnesses through a *subpoena duces tecum*. The burden is on the parties, however, to request the production of written evidence from witnesses and to compel depositions.

Florida Rule of Civil Procedure 1.390 permits the testimony of experts identified as prospective witnesses to be taken before trial, in accordance with the rules for taking depositions. Florida Rule of Civil Procedure 1.280 also allows for the parties to exchange information and opinions about which an expert is expected to testify at trial. According to Rule 1.280, information and opinions from experts not retained to testify at trial can only be obtained under limited circumstances.

11 Evidence – trial

How is evidence presented at trial? Do witnesses and experts give oral evidence?

Evidence may be presented at trial in several ways. Typically, a witness must testify as to the authenticity of an object or document before it is admitted into evidence. The rules of evidence also permit the admission of certain types of evidence without witness authentication. This includes matters which may be judicially noticed pursuant to the Florida Rules of Evidence, chapter 90, Florida Statutes, such as the laws of foreign nations, provisions of municipal and county charters and ordinances within the state, and facts not subject to dispute because they are generally known within the territorial jurisdiction of the court or are capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned.

The Florida Rules of Evidence also enumerate certain types of self-authenticating evidence, such as books or pamphlets issued by a government authority; newspapers or periodicals; inscriptions, signs, tags, or labels affixed in the course of business and indicating ownership, control or origin; and documents bearing the seal of the United States or any state accompanied by the signature of the custodian of the document attesting to the authenticity of the seal.

Once an object or document has been authenticated, or its admissibility has otherwise been established, a motion is made to introduce the object or document into evidence. Lay and expert witnesses may provide oral testimony at trial. Oral testimony is subject to the rules of evidence.

12 Interim remedies

What interim remedies are available?

A variety of interim remedies exist in Florida.

- Temporary injunctions: used to preserve the status quo pending final determination or final outcome of the case or until full relief can be granted following a hearing.
- Mandatory injunctions: used to require performance of an affirmative act that is essential to preserve the status quo.
- Pre-judgment *replevin*: used to ensure that property is not destroyed, concealed or removed from the jurisdiction during the pendency of an action. Pre-judgment attachment of property and garnishment of wages may also be available under limited circumstances.
- Notice of *lis pendens*: used to record notice of pending litigation involving a piece of real property, asking a potential buyer to be aware of that pending litigation and act accordingly.

13 Remedies

What substantive remedies are available?

Florida courts may award actual damages and punitive damages. Actual losses are not necessarily restricted to the actual loss in time or money – they may include amounts for pain and suffering, mental anguish and suffering, and disabilities and permanent disfigurement. Actual losses are not dependent on proof of malice.

Juries may award punitive damages to the prevailing party in any tort action, in accordance with statutory and common law. While Florida courts have abandoned the view that punitive damages must bear a reasonable relation to actual damages, the US Supreme Court has held that excessive punitive damages may violate the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

Courts may, depending on statutory or common law, award attorneys' fees, court costs, interest and/or declaratory, injunctive or equitable relief.

14 Enforcement

What means of enforcement are available?

In the case of a money judgment, the court may enforce through execution, a writ of garnishment, or other appropriate processes or proceedings. To recover property the court may issue a writ of possession for real property and a writ of *replevin*, garnishment, or distress for other types of property. If a court, in its final judgment, orders specific performance or the performance of an act, it must specify a time during which the act must be performed and, if disobeyed, the court can hold the disobedient party in contempt or may appoint a third party to perform the act. If the judgment is for the conveyance or transfer of real property, the judgment has the effect of a duly executed and recorded conveyance, transfer, release, or acquittance.

15 Public access

Are court hearings held in public? Are court documents available to the public?

Yes. The Florida Supreme Court has held that there is a strong presumption that court hearings are open. Under very limited circumstances (eg, to protect trade secrets) that are rarely invoked, courtroom proceedings may be closed by a court 'gag order'. Special proceedings, such as those involving juveniles, may also be closed. Court documents are considered public records and, unless a court orders otherwise, are available without restriction to the public at large.

16 Inter partes costs

Does the court have power to order costs?

Florida law permits the 'prevailing party' to recover court costs, but follows the 'American rule' with respect to attorneys' fees – the prevailing party may not be awarded attorneys' fees unless there is a specific statutory or contractual provision authorising the award.

17 Funding arrangements

Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

Contingency fee arrangements are allowed in Florida, except in domestic relations and criminal cases. The Florida Rules of Professional Conduct require that a contingency fee arrangement be in writing, and set forth specific binding guidelines for such fee arrangements, including the permissible percentage.

Under Florida law, a third party may finance a party's litigation costs. In the event that a party chooses to finance litigation through the use of a 'litigation loan', for example, the third party may take the share of proceeds contemplated in the loan agreement. Attorneys, however, may not finance their clients' litigation (though an attorney may enter into a contingency fee agreement and may advance costs and expenses conditioned on repayment after conclusion of the matter). There are no prohibitions on a defendant sharing its risk with a third party.

18 Insurance

Is insurance available to cover all or part of a party's legal costs?

Yes. Legal insurance some times does exist that provides coverage in the event of litigation or some other legal issue. These services vary in terms of their quality, scope, and cost. They are also usually subject to some deductible. The existence of such coverage is often discoverable by simply making a written request for disclosure.

19 Class action

May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Yes. Both the Federal Rules of Civil Procedure and the Florida Rules of Civil Procedure allow litigants with similar claims to commence a lawsuit with a group of similarly situated individuals. Both the Florida and Federal Rules of Civil Procedure require that, prior to certifying a class, the court determine that:

- the members of the class are so numerous that separate joinder of each member would be impractical;
- the claims or defences of the representative party must raise questions of law or fact common to the questions of law or fact raised by the claims and defences of each member of the class;
- the claims or defences of the representative party are typical of the claims or defences of each member of the class; and
- the representative party can fairly and adequately protect and represent the interests of each member of the class.

20 Appeal

On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

Parties may appeal to the Florida Supreme Court under limited circumstances. The Florida Supreme Court has mandatory review and discretionary review. Because discretionary review in the Florida Supreme Court is rarely granted, the pertinent district court of appeal is usually a case's final arbiter.

The district courts of appeal have jurisdiction to hear appeals from final orders of the trial courts and certain non-final orders of the circuit courts (eg, decisions regarding venue, jurisdiction and injunctions). The circuit courts have jurisdiction to hear appeals from final orders entered by lower courts, such as county courts and administrative agencies.

Appeals of federal court decisions proceed through the federal judiciary. Only the US Supreme Court has jurisdiction to review decisions of the state court system. Such review is limited to final decisions of the highest state court, and the US Supreme Court has complete discretion whether to review decisions of the state's highest court. Federal appellate courts may certify issues of Florida law to the Florida Supreme Court for a determination of Florida law and, in such cases, the Florida Supreme Court has discretionary jurisdiction to advise the federal appellate court as to Florida law.

21 Foreign judgments

What procedures exist for recognition and enforcement of foreign judgments?

Florida has enacted the Florida Enforcement of Foreign Judgments Act and the Uniform Out-of-Country Foreign Money-Judgment Recognition Act. The latter act sets out a list of reasons because of which a court may refuse to recognise a foreign judgment. In general, the test of whether a foreign judgment will be recognised is whether a Florida judgment would be enforced if the foreign court were asked to do so under the same circumstances.

22 Foreign proceedings

Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

Under Florida's Uniform Foreign Depositions Law, witnesses summoned by the court of a foreign jurisdiction may be compelled to testify as if the action were occurring in Florida.

Arbitration

23 UNCITRAL Model Law

Is the arbitration law based on the UNCITRAL Model Law?

The Florida Arbitration Code (FAC) is modelled on the Uniform Arbitration Act. Other statutes provide procedures for the arbitration of certain types of disputes (eg, arbitrations regarding oil spills, public utilities and state roads). If the dispute involves interstate commerce, then the Federal Arbitration Act (FAA) supersedes the FAC because of the Supremacy Clause of the US Constitution.

The Florida International Arbitration Act (FIAA) is based on the UNCITRAL Model Law. The FIAA is intended to resolve disputes arising out of international relationships and applies to disputes between two or more individuals, at least one of whom is not a resident of the US. Under certain specifically delineated circumstances, the FIAA may apply even if the dispute arises between citizens of the US.

24 Arbitration agreements

What are the formal requirements for an enforceable arbitration agreement?

The FAC applies only where the parties agree in writing to submit to arbitration any dispute existing between them at the time of the agreement or where the parties include a provision in a written contract stipulating that arbitration will be used to resolve disputes arising from the contract.

25 Choice of arbitrator

If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

Courts must appoint at least one arbitrator where the agreement lacks a method for the selection of arbitrators, if the agreed upon method cannot be followed for any reason, or if an arbitrator who has been appointed fails to act and his or her successor has not been appointed. Court-appointed arbitrators have powers as if named or provided for in the contractual provision or arbitration agreement.

Under the FAC, an arbitrator may only be challenged if he or she demonstrates 'evident partiality'. Courts have not expected complete neutrality where arbitrations are appointed by parties to the dispute – courts expect such arbitrators to behave as 'partisans only one step removed from the controversy'. The standard for challenging an arbitrator is high – the arbitrator must have acted with 'overt corruption or misconduct in the arbitration itself'.

The FAA allows a court, once petitioned, to appoint a sole arbitrator if the parties do not have an agreement on point.

26 Procedure

Does the domestic law contain substantive requirements for the procedure to be followed?

The FAC contains a number of substantive requirements for the procedure to be followed. The arbitrators are required to appoint a time and place for the hearings and notify the parties at least five days before the hearing; parties are entitled to present evidence material to the dispute and cross-examine witnesses at the hearing. The FIAA gives the arbitration tribunal much procedural leeway, allowing it to 'conduct the arbitration as it deems appropriate, including determination of the language to be used', unless the FIAA or written agreement provides otherwise. Under the FAC and FIAA, a party has the right to representation by counsel; the right to counsel may not be waived in a contractual provision.

The FAA provides for the appointment of an arbitrator and for the subpoena of third parties to attend the hearings and produce documents. The parties to the dispute may choose the rules to govern the procedure.

27 Court intervention

On what grounds can the court intervene during an arbitration?

Under the FAC, courts have jurisdiction to enforce the arbitration agreement or contractual provision providing for arbitration, to enter judgment on an arbitral award and to vacate, modify or correct an arbitral award as provided for in the FAC.

Under the FIAA, courts may assist in the process of taking evidence, if such assistance is sought by the arbitrators. During arbitration, courts are empowered to appoint successor arbitrators if the underlying agreement lacks a procedure; grant interim relief; and, in certain circumstances, a deadline for the issuance of an arbitral award. Without authorisation from the arbitral tribunal, under the FIAA, parties may seek interim relief on their own.

28 Interim relief

Do arbitrators have powers to grant interim relief, such as to preserve assets or documents?

The FAA and FAC are silent regarding the arbitrator's power to grant interim relief. The FIAA gives the arbitral tribunal the power to grant interim relief 'as it considers appropriate'.

29 Award

When and in what form must the award be delivered?

Under the FAC, the arbitral award must be in writing and must be signed by the arbitrators. The arbitral tribunal must then deliver the award to the parties. The tribunal must render an award by the deadline provided in the agreement or, if the agreement is silent, within such time as the court orders on application of a party. Parties may agree in writing to extend this deadline before or after it has expired.

Under the FIAA, the arbitral tribunal must issue its award within the time specified by the parties or, in the absence of such specification, as the tribunal determines appropriate. The tribunal may issue, in addition to final awards, interim, interlocutory, or partial awards. Awards from the tribunal must be in writing, state the date and place of issuance, and must be signed prior to issuance by each member of the tribunal unless, in the case of a tribunal with more than one member, the award is signed by a majority of the members and an explanation is given for each missing signature. The tribunal must then deliver the award to the parties. The tribunal must issue a written statement of the reasons for an award only if all parties agree or if the tribunal determines that a failure to do so would jeopardise the recognition or enforcement of the award. Under certain circumstances, the arbitral tribunal may make its award public.

Under the FAA, the arbitral award must be in writing.

30 Appeal

On what grounds can an award be appealed to the court?

Under the FAC, courts will vacate an arbitral award if the arbitrators acted with overt corruption or misconduct during the course of the arbitration; if there was evident partiality by an arbitrator; if the arbitrators exceeded their powers; if the arbitrators refused to postpone a hearing upon a sufficient showing; or if the arbitrators refused to hear evidence material to the controversy. Arbitral awards are reviewable and modifiable by the court if there was an evident miscalculation or mistake in the award; if the arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; and if the award is imperfect as a matter of form, not affecting the merits of the controversy. Courts must modify and correct the award to effect its intent.

Under the FIAA, courts may vacate a final award if there was no written undertaking to arbitrate, if there was fraud in the inducement of that undertaking or if a panel determined that the dispute was non arbitrable; if the challenging party was not given notice of the appointment of the arbitral tribunal or of the arbitral proceedings; if the arbitral tribunal conducted its proceedings so unfairly as to substantially prejudice the rights of the challenging party; if there was corruption in the proceedings; if a neutral arbitrator had a material conflict of interest with the party challenging the award; if the award resolves a dispute which the parties did not agree to refer to the tribunal; or if the tribunal was not properly constituted.

Under the FAA, courts may vacate awards that were procured by corruption, fraud or undue means; that resulted from evident partiality or corruption in the arbitrators; that were rendered after the arbitrators refused to hear material evidence; or that result from the arbitrators exceeding their powers.

31 Enforcement

What procedures exist for enforcement of foreign and domestic awards?

Under the FAA, parties can enforce foreign (ie, where the seat of the arbitration is outside of the US), non-domestic (rendered in the US,

but bears a reasonable relationship with one or more foreign states) and domestic arbitral awards that involve commerce. To be enforceable, foreign awards must be rendered in a state that is a contract party to the New York or Panama Conventions. Domestic awards that do not involve commerce are governed by the arbitration law of the state where the award was rendered.

Parties have one year to confirm a domestic award and three years to confirm a foreign or non-domestic award falling under the New York and Panama Conventions. Parties seeking enforcement of an award may petition the court for confirmation of the award. The petition should be accompanied by the original arbitration agreement and the original of the award, or certified copies.

Parties opposing enforcement must show why the award should not be enforced or why it should be set aside, corrected, or modified. Courts can refuse to enforce a foreign award, in accordance with article 5 of the New York and Panama Conventions, or a domestic award, in accordance with section 10 of the FAA, if the arbitration was conducted unfairly, though courts interpret 'unfairness' very narrowly. Domestic awards can also be set aside for additional common law reasons.

Awards rendered under the auspices of the International Centre for the Settlement of Investment Disputes cannot be challenged in the courts because US law provides that those awards 'create a right arising under a treaty of the United States' and are tantamount to the final judgment of a court.

In Florida, the enforcement of domestic and international arbitration awards is governed by the FIAA. As with the FAA, domestic and international arbitration awards become court-enforced after a petition is made to the court and the court enters a judgment confirming, modifying or correcting the award.

32 Costs

Can a successful party recover its costs?

Under the FAC, arbitrators have the power to award costs, not including attorneys' fees, in the arbitration award. Under the FIAA, the arbitrators have discretion to award costs, including attorneys' fees, as the arbitral tribunal 'deems appropriate'. Under the FAA, a prevailing party may only recover costs if the agreement expressly provides for that.

Alternative dispute resolution

33 Types of ADR

What types of ADR process are commonly used? Is a particular ADR process popular?

Mediation and arbitration are common in Florida. Mediation is usually attempted early in the litigation process in an effort to avoid expensive fees and to preserve limited judicial resources. The parties may voluntarily submit to mediation, although section 44.102 of the Florida Statutes authorises courts to order mediation.

Arbitration is typically prescribed by a contract between parties and is very common in commercial disputes. Arbitration is popular because it offers parties a private forum and allows the parties to select arbitrators with expertise in their industry or experience relevant to their dispute. Although arbitration is typically governed by contract, courts are also authorised to order non-binding arbitration under section 44.104 of the Florida Statutes.

34 Requirements for ADR

Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

As previously noted, courts may order mediation or non-binding arbitration at any time before proceeding to trial.

Miscellaneous

35 Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

No.

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