

THIRD JUDICIAL CIRCUIT OF FLORIDA
ADMINISTRATIVE ORDER NO. 2009-001
Replaces 2007-004

FAMILY AND DEPENDENCY MEDIATION

Whereas, the Third Judicial Circuit recognizes that mediation is a process whereby a neutral third party encourages and facilitates the resolution of a dispute through an informal and non-adversarial process with the objective of helping the parties reach a mutually acceptable and voluntary agreement; and

Whereas, mediation can result in cost and time efficiencies to the parties and the court; and

Whereas, Pursuant to Chapter 44, Florida Statutes, and Florida Family Law Rules of Procedure 12.740 and 12.741, the court, on its own motion, may refer all or any part of a civil case to mediation for the purpose of mediating family matters;

It is therefore

ORDERED as follows:

1. The Third Judicial Circuit shall have a circuit-wide mediation program. "Family mediation" refers to mediation for disputed family matters, child support, and domestic violence issues (only limited mediation in appropriate cases); "dependency mediation" refers to mediation for juvenile dependency matters and cases involving children and families in need of services.

2. All court mediation programs shall be administered and coordinated by the mediation coordinator at the direction of the chief judge, the court administrator, or their designee.

REFERRAL TO FAMILY MEDIATION

3. For purposes of this order, the term "family matters" means issues in domestic proceedings including, but not limited to, the following areas: pre- and post-dissolution of marriage, debt and property distribution, alimony, paternity, parental responsibility, child support, residence of child(ren), and parental access issues involving emotional or financial considerations not usually present in other circuit civil cases.

4. Upon a finding of dispute by a court, the parties in any filed cases that involve family matters must participate in a mediation conference unless otherwise exempt by statute, rule, or court order. The parties or the court shall schedule family mediation at an early stage of the proceedings, if possible. No final hearing will be set in contested cases until the court has received a report from the mediator that includes the outcome of the mediation, including the attendance or absence of the parties. All mediation reports involving pro se parties shall be sent to the family law case manager for review and to schedule a final hearing if appropriate.

5. As many family law cases involve domestic violence or power and control issues that may adversely impact the mediation process or jeopardize the safety of a litigant, a domestic violence screening shall be conducted by Court Administration prior to scheduling mediation. The screening shall include a related case search and provide each party the opportunity to respond to a survey to determine if additional safety precautions may be warranted. If additional security is deemed appropriate, Court Administration shall make security arrangements with the appropriate county sheriff or sheriff's designee who shall be responsible for providing security.

FUNDING, ELIGIBILITY, AND FEES FOR FAMILY MEDIATION

6. Funding of the Third Judicial Circuit Court Family Mediation Program shall be from state general revenues as appropriated by the Legislature, trust fund and cost recovery of mediation user fees, and by other available sources such as grants or county revenues.

7. User fees shall be collected by the Clerk of Court. One dollar of the mediation fee will be retained by the Clerk of Court as a processing fee and the remainder of the fee goes to the state Mediation and Arbitration Trust fund. The Clerk of Court shall provide an accounting of all mediation fee collections to the court administrator on a monthly basis.

8. User fees pursuant to section 44.108, Florida Statutes, are established herein. Parties shall be eligible to use the family mediation program when the combined gross income of the parties is less than \$100,000 per year. The following fees shall be collected by the Clerk of Court:

- a. \$120 per person per scheduled session when the parties' combined annual gross income is more than \$50,000 but less than \$100,000; and
- b. \$60 per person per scheduled session when the parties' combined annual gross income is \$50,000 or less.

Parties are presumed to have the ability to hire a private mediator when their combined annual gross income is \$100,000 or more, unless the court finds that there are extraordinary circumstances which make the parties unable to afford private mediation.

9. To determine the appropriate user fee, each party shall provide the Clerk of Court with a current financial affidavit and one of the following: a current pay stub, a letter from the party's employer stating current earnings, or the most recent 1040 income tax return form filed with the IRS.

10. User fees shall be paid before mediation begins. The Clerk of Court shall provide a receipt to the party when the payment is made, and the party shall present the receipt to the mediator at the beginning of mediation. In the event that a party is unable to pay the fee before mediation, the party may sign an affidavit promissory note with the Clerk of Court agreeing to pay the fee within 30 days.

CONTRACT FAMILY MEDIATORS

11. Family mediation program contract mediators may be scheduled only after the mediation coordinator has determined that there is sufficient revenue for

compensation. Contract mediators shall be compensated in accordance with the terms of their Professional Services Agreement.

PRIVATE FAMILY MEDIATORS

12. Parties who are not eligible for family mediation program services, or those parties who choose not to use the family mediation program, may use a private mediator or private mediation service. Private mediators shall be paid by the parties or as otherwise ordered by the court.

JUVENILE DEPENDENCY MEDIATION

13. A juvenile dependency mediation program shall be established circuit wide.

14. Parties to dependency mediation will not be charged a fee.

15. Pursuant to Chapter 39, Florida Statutes, and Florida Family Law Rules of Procedure Rule 8.290, the court on its own motion may refer all or any part of a dependency case to dependency mediation.

16. All parties and participants ordered to mediation shall be physically present at the mediation conference unless their absence is ordered by the court, or the absence is approved by the mediator and the parties. Persons representing an agency, department or program must have full authority to enter into an agreement that is binding on that agency, department, or program.

GENERAL PROVISIONS

17. Willful refusal to schedule or failure to appear at a scheduled mediation without good cause shall place the offending party in jeopardy of sanctions by the court which may include contempt of court, the payment of all mediator and attorney fees and other costs, the striking of pleadings or portions thereof, and/or other appropriate sanctions. Parties who do not appear for mediation may be charged the maximum fee of \$120.00 or the amount equal to the fee paid by the opposing party. The offending party will then be required to pay the appropriate fee for the rescheduled mediation.

18. Except as otherwise provided by sections 44.401-44.406, Florida Statutes, verbal or written communications made during a mediation session or proceeding, other than an executed settlement agreement, shall be confidential and inadmissible in subsequent legal proceedings. Confidentiality shall be strictly maintained in accordance with the law.

19. This Administrative Order replaces Order No. 2007-004, dated January 11, 2007.

ORDERED this 13th day of March, 2009.


E. VERNON DOUGLAS, CHIEF JUDGE

Administrative Order No. 2009-001, Family and Dependency Mediation

cc: Third Circuit Clerks of Court
Sondra Williams, Court Administrator

Distributed on 3/16/09
By Lisa Butler.