

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR DESOTO, MANATEE, AND SARASOTA COUNTIES, FLORIDA**

**ADMINISTRATIVE ORDER: 2011-2.2
(This Order rescinds and supersedes
Administrative Order 2008-7.2)**

**IN RE: ESTABLISHING COURT ORDERED MEDIATION SERVICES
IN THE TWELFTH JUDICIAL CIRCUIT FOR COUNTY CIVIL,
FAMILY AND DEPENDENCY CASES**

WHEREAS, mediation is a process whereby a neutral third person acts to encourage the resolution of disputes through a non-adversarial process and assists the parties in reaching a mutually acceptable agreement; and

WHEREAS, Fla. Stat. Section 44.102 authorizes the Court to refer to mediation all or any part of a filed civil action, for which mediation may or may not be required by statute, but is not expressly prohibited; and

WHEREAS, Fla. Stat. Section 44.102, provides the Court shall refer to mediation all or part of contested family matters and issues as defined in section 61.13, Florida Statutes, in circuits in which a family mediation program has been established, and upon a Court finding of a dispute; and

WHEREAS, Fla. Stat. Section 44.102, provides the Court may refer to mediation all or any portion of a matter relating to dependency in circuits in which a dependency mediation program has been established; and

WHEREAS, Court Mediation Services (herein after referred to as "Mediation Program") was created as a court program to provide cost effective and expeditious alternative dispute resolution processes for county, family, and dependency court cases that may be amicably resolved through mediation prior to hearing by the Court, and conducted by mediators who have been certified by the Supreme Court of Florida; and

THEREFORE, in accordance with Section 44 of the Florida Statutes and other applicable Florida Rules of Civil Procedure, it is **HEREBY ORDERED** that:

I. Conduct of Mediation

- A. Mediation shall be conducted in accordance with Florida Rules of Civil Procedure 1.700, et seq., Family Law Rules of Procedure 12.740, et seq., Florida Rules for Certified and Court Appointed Mediators 10.020, et seq., Chapter 44, Florida Statutes, Section 61.183, Florida Statutes, 12th Judicial Circuit Orders of Referral, specific judicial requirements pertaining to mediation, and instructions of the Mediation Program regarding the mediation

process and procedures. All matters regarding mediation, including all motions, shall be heard by the Court.

- B. Approved forms to implement the procedures set forth herein are available on the Twelfth Judicial Circuit's website at www.jud12.flcourts.org.

II. Mediation Session Fees and Session Length

- A. County Civil mediation fees shall be assessed at \$60.00 per party per session.

County mediations (excluding small claims) shall be scheduled up to 90 minutes, and the parties shall not be assessed additional fees until after the expiration of 90 minutes.

- B. Family mediation fees shall be assessed as follows:

1. \$120.00 per person per scheduled session in family mediation when the parties combined gross income is greater than \$50,000 per year but less than \$100,000 per year;
2. \$60.00 per person per scheduled session in family mediation when the parties combined gross income is less than \$50,000 per year;
3. The Court's Family Mediation Program cannot be used if the combined gross income of the parties exceeds \$100,000 per year. In such cases, private mediators are required.

Family mediations shall be scheduled for up to 3 hours, and the parties shall not be assessed additional fees until after the expiration of 3 hours.

- C. There are no mediation fees for residential eviction or small claims cases.
- D. A small claims or residential eviction mediation session shall not exceed 60 minutes.
- E. There are no fees to use the *pre-filing* mediation services offered by the Citizen Dispute Settlement Program.
- F. There are no fees for dependency mediation. A dependency mediation session shall not exceed 3 hours.
- G. Parties determined by the Clerk of the Court to be indigent according to State of Florida guidelines are not required to pay a fee. The Clerk of the Court shall make the initial determination of indigence according to State law.

- H. Session lengths are defined pursuant to this Administrative Order. Parties and counsel must appear at the mediation conference on time and must pay the required mediation fee prior to the time the mediation conference is scheduled to begin. Session length shall not be extended due to the failure of parties and/or counsel to arrive punctually or the failure to timely pay required fees.

III Mediation Fees to Be Paid Prior to Receiving Services; Failure to Appear; Failure to Pay Fees; Procedures

- A. If applicable, the Order of Referral to court ordered mediation shall include the amount of the mediation fees, which are due to be paid prior to the scheduled mediation.
- B. Orders of Referral prepared by attorneys must substantially conform to any Order of Referral approved by the Chief Judge of this circuit. Any notices or orders prepared by attorneys must include the amount of the fee which is due and owed for the mediation.
- C. Mediation fees shall be paid directly to the Clerk of the Circuit Court. Parties shall appear at mediation with documented proof of payment, such as a receipt from the Clerk of Court, or an approved Certificate of Indigence by the Clerk of Court.
- D. Mediation fees become due when the mediation session is scheduled and must be paid to the Clerk of Court prior to the mediation session, regardless as to whether or not the other party has paid the fees or appeared at the mediation session.
- E. If one party fails to appear at a scheduled mediation session, the party who appears shall nonetheless pay his/her own fee. The party who failed to appear shall, at minimum, be assessed the fee for the missed session. Upon motion of a party or upon action of the Court, the party who failed to appear may be assessed both parties' mediation fees if another session is ordered by the Court or agreed to by the parties.
- F. Failure to appear at a duly noticed mediation conference, without good cause shown, may result, upon motion, in the imposition of sanctions including an award of mediation and attorney fees and other costs against the party failing to appear.
- G. If a party fails to pay an assessed mediation fee, the initial mediation shall nonetheless be conducted. At the discretion of the ADR Director, no subsequent mediation session will be scheduled or conducted until all prior assessed mediation fees are paid in full.

- H. If a party fails to pay the fee prior to the mediation, the non-paying party will be asked to enter into an Agreement for Payment of Mediation Fees, requiring payment of the mediation fee within twenty (20) days, and providing for entry of a Judgment against the non-paying party, without notice or hearing, in the event that the non-paying party fails to comply with the agreement to pay the fees.
- I. If a party fails to pay the fee within twenty (20) days, Court Mediation Services shall file an Affidavit of Non-Payment with the Court, and the Court shall enter a Judgment against the non-paying party without notice or hearing. A Judgment may negatively affect credit and could lead to seizure of property by the State of Florida to satisfy the Judgment.
- J. If a non-paying party declines to enter into an Agreement for Payment of Mediation Fees, the Mediation Program shall report the non-payment immediately to the Court, and the Court shall issue an Order to Show Cause. Thereafter, a Judgment or other sanctions may be entered against the non-paying party.
- K. If a Judgment is entered against the non-paying party, the Clerk of Court shall file a Satisfaction of Judgment releasing the party from the Judgment entered upon payment of the mediation fee.
- L. The Court may also withhold entry of a Final Judgment or Order Approving Settlement Agreement until all outstanding mediation fees are paid.
- M. Upon motion of a party, the Court may reapportion the fees already paid for mediation services where one party has a disproportionate share of the income and assets.
- N. Petitioner, or counsel of record, must notify the Mediation Program, in writing, of any settlement or dismissal of the action.

IV. Small Claims and County Court Mediation Procedures

- A. All contested small claims cases shall be referred to mediation automatically by this administrative order. The Notice of Pre-Trial Conference shall contain standard information on mediation case referral.
- B. Referrals to mediation in eviction cases should be conducted within ten days of referral to mediation, if practical.
- C. Referrals to mediation for county court cases, other than small claims, should be made no later than the pretrial conference. A

standard scheduling order should be used which sets forth the time frame for discovery, mediation, and the trial date. The court should have available mediation dates to choose from in order to minimize delay and scheduling difficulties.

- D. Referrals to family mediation should be made as soon as possible after an answer has been filed and/or financial affidavits have been filed and/or exchanged and prior to the filing of the 30-day notice of trial.

V. Family Mediation Program Procedures; Required Documentation

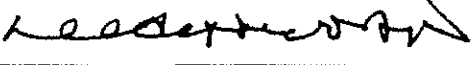
- A. Current Financial Affidavits for BOTH parties MUST be filed prior to obtaining an Order of Referral to the Family Mediation Program. This requirement is necessary in order for the Family Mediation Program to adequately determine if the gross income of the parties meets statutory program eligibility requirements. If the parties are not financially eligible, the mediation will be cancelled immediately, even if all parties appear at the mediation session.
- B. If financial affidavits are not filed, Orders of Referral will NOT be granted and proposed Orders of Referrals will not be signed.
- C. If a party has failed to comply with the Court's requirements regarding the filing of financial affidavits, the opposing party or counsel may submit to the judge a *Motion for Order to Show Cause*.
- D. Parties with children shall bring a draft of a Parenting Plan to the mediation. Parenting Plan forms may be obtained from the Clerk of Court or downloaded from the circuit website: www.jud12.flcourts.org or the Florida State Courts website at www.flcourts.org.
- E. Mediation shall not be booked prior to the entry of an Order of Referral and may not be "double-booked" (reserving multiple blocks of time on JACS for the same case). Any mediation scheduled on JACS without an Order of Referral will be promptly cancelled by the Family Mediation Program.
- F. Pursuant to Section 44.102, Florida Statutes, upon motion or request of a party, the Court shall not refer any case to mediation if it finds there has been a history of domestic violence that would compromise the mediation process. The issuance of a temporary or final injunction alone is insufficient to establish that the mediation process is compromised.

VI. Telephonic Appearances; County Court (Excluding Small Claims) and Family Mediation

- A. Appearance at mediation conferences and sanctions for failure to appear shall be governed by Florida Rules of Civil Procedure 1.720(b) and Florida Rules of Civil Procedure 12.740(d) respectively.
- B. Upon approval by the Mediation Program, a party may appear telephonically for a mediation conference, *without prior approval* of the Court, only under the following circumstances:
1. The party must provide notice to the Mediation Program and the opposing party of their desire to appear telephonically under one of the following exceptions; *and*
 2. Notice must be given no later than 10 business days prior to the mediation conference; *and*
 3. The party's permanent and physical residence is outside of the State of Florida; *or*
 4. The party has a physical disability confirmed by a medical professional that prevents the party from being able to physically appear; *or*
 5. The party is on active military duty; *or*
 6. The party is incarcerated.
- C. The Mediation Program shall deny a request to appear telephonically upon the failure of a party to meet each requirement for telephonic appearance, without prior approval of the Court.
- D. Upon objection by the opposing party, a party must obtain prior approval of the Court no later than 5 days prior to the mediation conference. Approval by the Court will be considered only upon written motion.

IT IS FURTHER ORDERED that failure to comply with the terms of this Order and the Court's Order of Referral to Mediation, if applicable, may result in involuntary dismissal, default judgment, or other sanctions as provided by law.

DONE AND ORDERED in Sarasota County, Florida, on this 16 day of February, 2011.



**LEE E. HAWORTH, CHIEF JUDGE
TWELFTH JUDICIAL CIRCUIT
STATE OF FLORIDA**

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