

IN THE CIRCUIT COURT OF THE 16th
JUDICIAL CIRCUIT OF THE STATE OF
FLORIDA, IN AND FOR MONROE COUNTY

ADMINISTRATIVE ORDER 5.037

IN RE:

FAMILY AND
DEPENDENCY MEDIATION

WHEREAS, mediation is a process whereby a neutral third person acts to encourage and facilitate resolution of litigant disputes prior to judicial determination in an informal, non-adversarial manner with the goal of helping the parties reach a mutually acceptable agreement. The mediation process has proven to be a judicial process that improves the efficiency and proper administration of justice for families and children;

WHEREAS, Chapter 44, Florida Statutes, and Rule 12.740, Florida Family Law Rules of Procedure, provide for mediation of contested family actions, except those expressly excluded by rule or law;

WHEREAS, Administrative Order AOSC09-19, Supreme Court of Florida, sets the Standards of Operation and Best Practices for Alternative Dispute Resolution Services in Florida's Trial Courts; and

WHEREAS, Rule 2.215(b)(3), Florida Rules of Judicial Administration, directs the chief judge to develop an administrative plan for efficient and proper administration of all courts within the circuit, and accordingly finds it necessary and appropriate to establish an administrative order related to a circuit-wide family and dependency mediation program; it is therefore

ORDERED AND ADJUDGED that the following procedures concerning a circuit-wide family and dependency mediation program shall be followed in the 16th Judicial Circuit:

A. REFERRAL TO MEDIATION

1. Any filed cases involving disputed family matters and issues will be referred to mediation. For purposes of this order, the term "family matters and issues" means disputed issues between married and unmarried parties before and after judgments, equitable distribution, division of property, alimony or spousal support, child support, sole or shared parental

responsibility, child residency, timesharing, juvenile dependency, and domestic violence (limited mediation in appropriate cases).

2. Referral to mediation shall be consistent with Chapter 44, Florida Statutes, state court procedural rules and other policies or reports that may be adopted.
3. The issuance of a Domestic Violence (DV) Injunction shall not be mediated.
4. Mediation of the ancillary issues of DV Injunction cases after judicial determinations may be mediated, but shall only be conducted by an experienced certified family mediator with an understanding of domestic violence dynamics.
5. Written mediation agreements reached in DV injunction cases shall be reviewed by the court, and if approved, incorporated into the final judgment.
6. Orders of Referral to Family Mediation shall contain, in a prominent place, the statutory language that "upon motion or request of a party, a 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 motion or request must be submitted in writing to the presiding judge and a copy sent to the Mediation Coordinator within ten (10) days of receipt of the Order of Referral to Mediation.
7. All Orders of Referral to Mediation shall contain, in a prominent place, a Notice to Persons with Disabilities in accordance with Rule 2.540, Florida Rules of Judicial Administration. Rule 2.540 requires that all notices of court proceedings held in a public facility and all process compelling appearance at such proceedings include the following statement:

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Court Administration, 302 Fleming Street, Key West, FL 33040, telephone number 305-292-3423, within two (2) working days of your receipt of this Order of Referral; if you are hearing or voice impaired, call 711.
8. Referrals to family mediation shall 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 thirty (30) day notice of trial.

- a) Prior to family mediation, the case shall be screened for appropriateness for mediation;
 - b) If either party seeks emergency or temporary relief, the court shall determine if the case should be expedited. If so, mediation shall be available within one week of the referral or the case shall be heard by the court;
 - c) If Case Management Conferences are held, the judge shall review the file to determine whether the case is ready for mediation. Available mediation dates shall be provided by the Mediation Program to the court in order to minimize delay and scheduling difficulties for cases appropriate for mediation;
 - d) Cases that are re-opened via a Supplemental Petition or Motion Modification shall be referred as soon as possible after service is obtained.
9. All dependency cases, including Termination of Parental Rights, shall be screened by the court and ordered to mediation as appropriate.
- a) Mediation referrals made at the shelter or arraignment hearing shall be held within seven (7) to ten (10) days. Available mediation dates shall be provided by the Mediation Program to the court in order to minimize delay and scheduling difficulties.
 - b) In Termination of Parental Rights cases, mediation referrals shall be made at the Advisory Hearing and the mediation conference shall be held within thirty (30) days. Available mediation dates shall be provided by the Mediation Program to the court in order to minimize delay and scheduling difficulties.
 - c) The mediation date will be scheduled at the time of the hearing. The date will be selected from the list of dates provided by the Mediation Program. The petitioning party must immediately notify the Mediation Program of the date selected.
10. The Court is not responsible for providing interpreters for any mediation.

B. MEDIATION SESSION FEES AND SESSION LENGTH

1. Mediation session fees in family cases shall be:
 - a) \$120 per person per scheduled session in family mediation when the

parties' combined income is greater than \$50,000, but less than \$100,000 per year;

- b) \$60 per person per scheduled session in family mediation when the parties combined income is less than \$50,000;
- c) There shall be no mediation session fees charged to parties for dependency mediation services;
- d) Indigent parties shall be provided services at no cost;
- e) Fees will be assessed based on the parties' financial affidavits. If one or both parties fail to file financial affidavits the fees will be assessed at \$120 per person.

2. Session Length

- a) Family mediations shall be scheduled for any amount of time between two (2) and three (3) hours at the discretion of the Mediation Coordinator or designee, but under no circumstances shall the parties be assessed additional fees until after the expiration of three (3) hours;
- b) For purposes of assessing fees pursuant to Section 44.108(2), Florida Statutes, the definition of a family mediation session is no more than three (3) hours;
- c) The definition of a dependency mediation is no more than three (3) hours;
- d) In family mediations, only one (1) session will be initially scheduled per case, unless both parties agree otherwise;
- e) If the family mediation session extends more than three (3) hours, the parties will be required to pay an additional session fee at the same rate.

C. FEE COLLECTION PROCESS

- 1. When court mediation services are ordered, mediation parties shall pay the statutorily authorized fees to the Clerk of Court.
- 2. The Mediation Coordinator shall exercise due diligence and determine the per party fee assessment prior to the Mediation Notice and/or Order being sent to the parties.

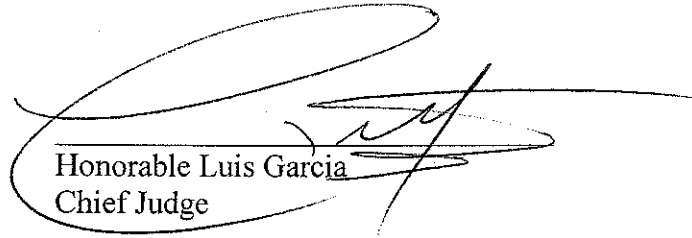
3. The fee amount owed shall be provided to the parties with the Mediation Notice and Notice of Referral to Mediation.
4. Pursuant to statute, once mediation is scheduled and noticed assessed fees shall be due and owed, whether or not the parties appear for scheduled mediation.
5. If one party fails to appear at a scheduled mediation session, the party who appears shall pay the assessed fee, and the party who fails to appear, shall be assessed for the missed session and shall also be assessed both parties' mediation fees if another session is ordered by the court or agreed to by the parties.
6. At the discretion of the Mediation Coordinator, no subsequent mediation sessions shall be scheduled or conducted until all prior assessed mediation fees are paid in full.
7. If a party fails to pay the assessed mediation fee, non-payment shall be reported to the court by the Trial Court Administrator or designee, and the court may issue an Order to Show Cause within ten (10) days. Failure by the court to issue an Order to Show Cause within ten (10) days shall not relieve the party from the financial obligation.
8. The court shall review mediation services paid by the parties at the final hearing and shall reapportion the fees as equitable.

D. RESCHEDULING AND CANCELLATIONS

1. If the parties agree to reschedule a family mediation, they must file a stipulation with the Clerk of Court and notify the Mediation Program three (3) full business days prior to the scheduled mediation date. Failure to do so will result in a penalty fee equal to the amount of the session fee for each party.
2. If the parties do not agree to reschedule, the party requesting to reschedule must file the appropriate paperwork with the court. The mediation will not be rescheduled without an order from the court. The case must be rescheduled three (3) full business days prior to the scheduled mediation date or the requesting party must pay a penalty fee equal to the total amount of the session fee.
3. Dependency mediations shall not be rescheduled or canceled without the proper paperwork being filed by the requesting party and an order from the court. It is the responsibility of the party requesting to cancel or reschedule the mediation to select an alternate date that is mutually agreeable to all parties. The Mediation Coordinator must be immediately notified of the date selected.

Upon the execution of this order, Administrative Order 5.020 *In re: Dependency Mediation Pilot Project* and Administrative Order 5.029 *In re: Visitation Mediation Program* are hereby rescinded.

DONE AND ORDERED in Chambers at Plantation Key, Monroe County, Florida, on this 15th day of October, 2009.



Honorable Luis Garcia
Chief Judge