

EIGHTH JUDICIAL CIRCUIT OF FLORIDA
ADMINISTRATIVE ORDER NO. 3.02

CIRCUIT COURT MEDIATION PROGRAM

In order to provide procedures for the Circuit Court Mediation Program in the Eighth Judicial Circuit whereby a neutral third party acts to facilitate resolution of litigant disputes prior to judicial determination in an informal, non-adversarial manner with the goal of helping the parties reach an acceptable agreement, in accordance with Chapter 44, Florida Statutes, and Florida Rules of Civil Procedure 1.700 through 1.730,

IT IS ORDERED:

I. REFERRAL TO MEDIATION

All contested issues and matters in circuit court cases shall be referred to mediation unless otherwise excepted by statute, rule or by order of the presiding judge. In a mortgage foreclosure suit concerning a homestead residence, the presiding judicial officer may order a conciliation conference in lieu of mediation or may forego referring the case to mediation, as the presiding judicial officer determines appropriate. For purposes of this order, "homestead residence" means a residential property for which a homestead real estate tax exemption was granted according to the certified rolls of the last assessment by the county property appraiser prior to the filing of the suit to foreclose the mortgage.

If applicable, the court shall order each contested case referred to mediation no later than the first case management conference. The parties, upon stipulation or agreement, are encouraged to proceed to mediation at an earlier stage of the proceedings. The case may be scheduled for trial before mediation occurs, but it shall be presumed that the parties are not ready for trial until mediation of all contested matters has taken place and the results of mediation are reported to the court. Cases

shall be removed from the trial calendar, if, at the time of the pretrial hearing, the parties have not concluded mediation of all contested matters or issues.

II. MEDIATORS

1. Certified circuit court mediators shall be used in circuit court, unless the parties stipulate to the appointment of an otherwise qualified but uncertified mediator. Except in the case of a mortgage foreclosure suit concerning a homestead residence, compensation of the mediators shall be paid by the parties on a prorated basis, with each party to bear an equal share of the fees, unless otherwise ordered by the court or on a basis otherwise agreed to in advance and in writing by the parties. In the case of a mortgage foreclosure suit concerning a homestead residence, compensation of the mediators shall be paid by the plaintiff, unless otherwise ordered by the court or on a basis otherwise agreed to in advance and in writing by the parties. In the context of a mortgage foreclosure suit concerning a homestead residence, “plaintiff” means the individual or entity filing to obtain a mortgage foreclosure on a homestead residence.

2. A mediation session is one (1) hour and additional sessions consist of a subsequent hour or hours or parts thereof. The applicable party or parties shall be directed by the court to make payment within ten (10) days of the billing date. A private mediator shall be paid for all reasonable preparation, session(s) and drafting time. In the event payment for services is not made within ten (10) days of the billing date or if either party does not provide sufficient notice of cancellation (forty eight [48] hours notice of cancellation to the mediator, for good cause), and upon motion by the mediator, the court shall issue an order to show cause why the court should not assess costs to the responsible party.

3. On behalf of the Chief Judge, the Office of Court Administration shall maintain a list of qualified mediators who have been certified by the Supreme Court, who have registered for appointment in this circuit, and are willing to serve the Eighth Judicial Circuit area for circuit court mediation purposes.

4. All circuit mediators shall conduct themselves in a professional manner as required by the Standards of Professional Conduct as set forth in the Florida Rules for Certified and Court-Appointed Mediators 10.200-10.690.

III. CIRCUIT COURT MEDIATION PROCEDURES

1. The Circuit Court Mediation Program for the Eighth Judicial Circuit shall be governed by Florida Rule of Civil Procedure 1.720. Other enabling policies, procedures, standard forms, schedules, or other related information may be developed in keeping therewith and with approval of the Chief Judge.

2. The following procedures shall apply:

a. The parties shall have fifteen (15) days from the date of the court's mediation referral order within which to schedule their first mediation session with a qualified mediator. The parties shall notify the court of the mediator selected and the date of the first scheduled mediation session, whereupon the court shall appoint the mediator selected.

(1) In the event a mediator is not mutually selected within fifteen (15) days, the plaintiff shall contact the court and the court shall appoint a certified mediator from the current private mediator list. Fla. R. Civ. Pro. 1.720(j). The mediation process shall not be used by any party to create unnecessary or avoidable delays in disposing of the case.

(2) Unless otherwise excused by the court, all circuit court mediations shall be concluded within forty five (45) days of the first mediation session and the first substantial mediation session shall take place within sixty (60) days of the referral order. Fla. R. Civ. Pro. 1.710(a).

b. Appearance in Person. If a party is represented by counsel, the attorney of record must physically appear at the mediation session unless the parties stipulate to the contrary or the court otherwise orders. Fla. Stat. § 44.1011(2). At all

mediation sessions of a mortgage foreclosure suit concerning a homestead residence, a representative of the plaintiff with full authority to settle without further consultation, must physically appear at the mediation session; however, if the plaintiff's attorney appearing in person has full authority to sign any settlement agreement reached at mediation, then the plaintiff's representative with full authority to approve the settlement may appear by phone rather than in person.

c. Party. For purposes of this order and its implementation, the term "party" shall include any insurance company or any entity or person which may have a legal obligation to pay or claim any damages sought in the litigation and mediation.

d. Authority. Parties attending mediation must have full authority to settle without further consultation.

e. Confidentiality. Confidentiality shall be strictly maintained in accordance with section 44.102(3), Florida Statutes. Mediators shall not submit evaluations or recommendations to the court, or otherwise professionally compromise their role as a mediator. Fla. R. Cert. Med. 10.330. Mediators shall comply with the reporting procedures at the conclusion of the mediation as required by statute and rule and shall report to the court the fact of attendance or non-attendance of the parties and counsel at all required mediation sessions, resolution of any issues through mediation and such other information as the parties agree to in writing.

f. Noncompliance. If a party fails to appear at a scheduled mediation session without good cause or without adequate notice of cancellation, or if an agreement between the parties cannot be reached, the mediator shall provide the judge, counsel for all parties, and the referral source, if applicable, with a notice of such failure to appear or failure of resolution by agreement. Willful refusal to appear at a required and scheduled mediation shall place the offending party in jeopardy of sanctions by the court, including contempt of court, assessment of mediator and

attorney fees and other costs, the striking of pleadings or portions thereof, and any other sanctions deemed appropriate by the court.

IV. STATISTICAL REPORTING

1. In order to assist in tracking the progress of each case, all orders of referral to mediation and mediation outcome reports, stipulations, or notices of non-settlement shall be filed by the mediator in the court file kept by the Clerk of Court. It is the responsibility of the mediator to submit these reports.

2. For the purposes of monitoring, developing, and improving the Circuit Court Mediation Program for the Eighth Judicial Circuit, all parties ordered to mediation may be requested to provide statistical but non-identifying information or data on standardized forms regarding the mediators, their compensation, and other administrative or procedural aspects of the mediation process. Compilation and results of such data may be published for statistical and administrative purposes, but will remain confidential in its non-identifying and generic nature. To that extent, such statistical data and information is not deemed a violation of any confidentiality standards as otherwise required by section 44.102(3), Florida Statutes, regarding communications made during a mediation session or proceeding.

This Order replaces Administrative Order No. 3.1241(B), titled "Circuit Mediation Program," entered on July 1, 2010.

This Order renumbers prior Administrative Order number 3.1241(C) entitled "Circuit Mediation Program."

ORDERED on this 5th day of October, 2012 *nunc pro tunc* August 21, 2012.



Robert E. Roundtree, Jr., Chief Judge