

IN THE EIGHTH JUDICIAL CIRCUIT OF FLORIDA  
ADMINISTRATIVE ORDER NO. 3.03

**COUNTY MEDIATION PROGRAM**

**In order to provide** for the requirements of the Eighth Judicial Circuit with regard to the County Mediation Program; and

**Whereas**, mediation is a process whereby a neutral third party 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; and, whereas, the mediation process has proven to be a judicial process that improves the efficiency and proper administration of justice for litigants, and;

**Whereas**, the statutory changes made by the legislature in the 2009 session require the circuit to modify its procedures for county court mediation; It is therefore

**ORDERED that:**

1. The Eighth Judicial Circuit shall have a County Court Mediation Program serving each county in the circuit. The County Court Mediation Program shall be administered and coordinated by the County Court Mediation Services Coordinator under the supervision of the circuit's Alternative Dispute Resolution/Mediation Program (ADR) Director at the discretion of the Chief Judge of the Circuit.

**I. REFERRAL TO MEDIATION**

1. All contested issues in county court civil actions shall be referred to mediation unless otherwise excepted by statutes, rule or court order. Florida Rules of Civil Procedures (Fla.R.Civ. P.) 1.750.

2. It shall be presumed that the parties are not ready for trial unless all contested issues have been mediated and the results of mediation have been reported to the court. No case

shall be scheduled for trial until mediation is concluded unless excepted as herein stated. Mediation shall not be required in cases where the defendant has defaulted, even though a hearing may be required to determine the amount of any liquidated damages, including attorneys fees.

3. In landlord-tenant actions for possession pursuant to Florida Statutes (Fl.Stat.)§83.59, where the landlord is entitled to the summary procedure provided in Fl.Stat. §51.011, and the issue of possession is contested pursuant to Fl.Stat. §83.60, the court, in its discretion, may waive mediation and proceed directly to hearing. If mediation is ordered by the court, it shall be conducted in an expedited manner.

4. In county court actions that are not small claims cases, the parties may object to mediation on grounds of financial hardship or any ground set forth in the Fla.R.Civ.P 1.700(b), in which case, mediation shall not be conducted until the court rules on the objection.

## **II. VOLUNTEER AND PRIVATE MEDIATORS**

1. The County Court Mediation Program will utilize volunteer, certified mediators in the mediation of small claims and contract program mediators for other county cases.

2. In county court cases (not small claims) parties have the option of utilizing the services of the County Court Mediation Program or hiring a private mediator. Compensation of private mediators shall be paid by the parties as they agree in advance in writing, or as otherwise ordered by the court. All parties who utilize a court program mediator, unless otherwise determined to be indigent, shall be assessed the mediation costs pursuant to Fl.Stat. §44.108, in the amount of sixty dollars (\$60.00) per person per ninety (90) minute mediation session. All fees must be paid to the Office of the Clerk of Court prior to the commencement of the mediation session.

3. On behalf of the Chief Judge, the County Court Mediation Services Coordinator shall maintain a list of certified mediators, who have contracted with this circuit, who are willing to serve in the Eighth Judicial Circuit's rotation list of program mediators, which shall consist of the mediators who provide volunteer small claims mediation services for the circuit.

### III. COUNTY COURT MEDIATION PROCEDURES

County court mediation procedures shall be governed by the Florida Rules of Civil Procedure. Other policies and procedures shall be developed in keeping with applicable rules and with the approval of the Chief Judge.

### IV. SCHEDULING

1. **Small Claims:** The judge presiding over the pretrial hearings shall assign each contested case on the docket to a volunteer mediator present at the pretrial hearing. In no event, shall the initial mediation session be held more than thirty (30) days after the pretrial conference. Fla.R.Civ.P 1.750(c).

2. **County Court:** In all other county court cases, the parties shall have ten (10) days from the date of the court's mediation referral order within which to schedule their first mediation session with a mediator. The parties may either schedule a mediation with a private mediator or they may schedule a mediation with a contract program mediator through the County Court Mediation Program.

3. In the event a mediator is not mutually agreed upon and selected within the ten (10) days, the plaintiff or the plaintiff's attorney shall contact the County Court Mediation Program for appointment of a program mediator from the rotation list.

4. Unless otherwise excused by the court, all county 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 forty five (45) days of the order referring the case to mediation. Fla.R.Civ.P 1.700(a)(1).

### V. APPEARANCE AT MEDIATION

1. **Small Claims:** In small claims cases, attorneys may appear on behalf of a party at mediation, provided that the attorney has full authority to settle without further consultation. In the alternative, if a counsel of record chooses to have another attorney cover the pretrial conference and mediate on his or her behalf, the counsel of record must be available by

telephone during the mediation session. Unless otherwise ordered by the court, a non-lawyer representative may appear on behalf of a party to a small claims mediation if the representative has the party's signed written authority to appear and has full written authority to settle without further consultation. Fla.R.Civ.P 1.750(e).

2. **County Court:** A party is deemed to appear at a mediation session if the following persons are physically present: (1) the party or parties representative having full authority to settle without further consultation; or (2) the party's attorney of record, if any, provided that the attorney has full authority to settle without further consultation or (3) a representative of the insurance carrier for any insured party, who has full authority to settle without further consultation, provided that the representative is not the insurance carrier's outside counsel.

3. **Attorneys:** Attorneys are not required to attend the mediation session; however, it is desirable that the attorneys attend and, if not, the parties are encouraged to consult with their respective attorneys before attending mediation.

4. **Confidentiality:** Except as otherwise provided in Fl.Stat. §44.401-406, verbal or written communication made during a mediation session 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. Mediators shall report to the court the fact of attendance or non-attendance of the parties at the mediation sessions, the existence or non-existence of mediation agreements, and any other information agreed to in writing by the parties.

5. **Failure to Appear at Mediation:** If a party fails to appear at a scheduled mediation session without good cause, without full authority, or without adequate notice of cancellation, the mediator shall provide the judge, counsel for both parties, and the mediation program with a notice of such failure to appear. Willful refusal to appear at a required and scheduled mediation session 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.

## VI. STATISTICAL REPORTING

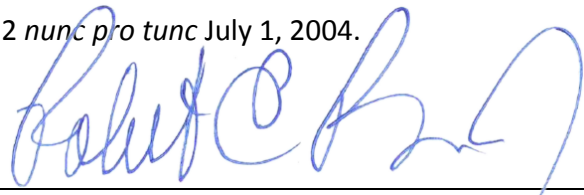
1. To track the progress of each case, all orders of referral to mediation, mediation outcome reports, stipulations and notices of non-settlement shall be filed in the court file kept by the Clerk of Court and copies shall be furnished by the mediator to the County Court Mediation Services Coordinator.

2. 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 information concerning administrative or procedural aspects of the mediation process. Publishing compilations of non-identifying and generic statistical data and information is not deemed a violation of any confidentiality standards prescribed by this order or by Fl.Stat. §44.401-406.

This order revises and supersedes Administrative Order No. 3.1100(D), entered January 31, 2005, *nunc pro tunc* to July 1, 2004.

This order renumbers and reformats prior Administrative Order No. 3.1100(E), entitled "County Mediation in Alachua County," entered December 16, 2010.

**ORDERED ON** this 5<sup>th</sup> day of October, 2012 *nunc pro tunc* July 1, 2004.



Robert E. Roundtree, Jr., Chief Judge