

IN THE EIGHTH JUDICIAL CIRCUIT OF FLORIDA
ADMINISTRATIVE ORDER NO. 5.04

FAMILY MEDIATION PROGRAM

In order to provide for the requirements of the Eighth Judicial Circuit with regard to the Family 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. The mediation process has proven to be a judicial process that improves the efficiency and proper administration of justice for families and children, and,

WHEREAS, the statutory changes made by the legislature in the 2009 session requires the circuit to modify its procedures for family mediation; It is therefore

ORDERED that:

I. MEDIATION OF FAMILY MATTERS AND ISSUES

1. The Eighth Judicial Circuit shall have a Family Mediation Program which will include mediation in disputed family matters, juvenile dependency, domestic violence (limited mediation in appropriate cases), Department of Revenue cases, and cases involving Children and Families in Need of Services (CINSFINS).

2. All court family mediation programs shall be administered and coordinated by the Alternative Dispute Resolution/Mediation Program (ADR) Director, with the assistance of Mediation Services Coordinators and administrative support staff, at the direction of the Chief Judge of the circuit.

II. REFERRAL TO FAMILY MEDIATION

1. For purposes of this order, the term “family matters and issues” shall be defined as disputed issues in marriage dissolution and post-dissolution and in domestic proceedings between unmarried parents, including areas of dispute involving emotional and financial considerations not usually present in other circuit civil cases, including property division, equitable distribution, spousal support, child support and parenting plans/time sharing.

2. In any filed case that involves family matters and issues as defined above, the parties are hereby ordered to attend family mediation unless otherwise excepted by statute, rule or court order. The parties are encouraged to schedule family mediation at an early stage of the proceedings pursuant to this administrative order. However, unless otherwise excepted by statute, rule or order of the court, no later than the first management conference, the court shall order compliance with this administrative order mandating mediation for all family matters or disputed portions thereof. No final hearing shall be scheduled in contested cases until the court has received a report from the mediator that includes the outcome of the mediation and the attendance of the parties. Upon written motion with good cause shown, a party may apply to the court to extend the time for, waive, or toll the required mediation.

3. 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.

4. All mediators shall conduct themselves in a professional manner as required by Florida Statutes and standards of professional conduct established by the Florida Rules for Certified and Court-Appointed Mediators.

III. COURT FAMILY MEDIATION PROGRAM SERVICES AND PROCEDURES

1. The court Family Mediation Program shall be governed by the applicable Florida Statutes (Fl.Stat.) and the Florida Rules of Civil Procedure. The ADR Director in conjunction with the Chief Judge shall develop other enabling policies, procedures, standard forms, schedules, and related information in keeping with this administrative order.

2. Staff mediators, as well as contract mediators, shall provide program mediation services to eligible parties.

3. All party litigants shall have ten (10) days from the date of the court's order directing compliance within which to schedule their first mediation session with the court Family Mediation Program or a private mediator. In the event a mediator is not mutually agreed upon and selected within ten (10) days, the petitioning party or the party's attorney shall contact the ADR Program for appointment of a mediator from the rotation list of certified Family Mediators registered for appointment by this circuit. The mediation process shall not be used by any party to create delays in disposing of the case.

4. Unless otherwise excused by the court, the first mediation session shall take place within sixty (60) days of the order directing compliance and any further mediation sessions shall be concluded within forty five (45) days of the first mediation session.

5. While it may be desirable that attorneys for the parties attend the mediation sessions, attorney attendance is not required. Represented parties who attend mediation without their attorneys are strongly encouraged to review the contents of any proposed agreement emanating from mediation with their respective counsel of record as soon as possible and well within the ten (10) day period allowed for written objections to such agreement.

6. Except as otherwise provided by Fl.Stat. §44.401-406 (2009) 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 law. Family mediators shall not be authorized to conduct, prepare, communicate, nor submit evaluations and recommendations to the court, or otherwise professionally compromise their role as mediator with other inapplicable roles such as investigator, evaluator, therapist, or legal advisor. Family mediators shall comply with required reporting procedures at the conclusion of mediation and shall report in writing to the court and the ADR Director the fact of attendance or non-attendance of the parties at the required mediation session(s) the existence or non-existence of

mediated agreements or mediated partial agreements, and such information to which both parties agree.

7. Once a mediation session is scheduled and noticed by the program, it may only be cancelled by mutual agreement of the parties or order of the court.

8. If either party fails to appear at a scheduled mediation session without good cause, the program mediator shall provide the judge and both parties with a notice of such failure to appear. Willful refusal to schedule a required mediation session or failure to appear at a scheduled mediation session without good cause 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/or other appropriate sanctions, and the court may issue an order to show cause as to why the court should not assess fees and costs against the responsible party or parties.

IV. FEE, FUNDING AND ELIGIBILITY FOR THE FAMILY MEDIATION PROGRAM

1. Funding for the court Family Mediation Program shall be from the Mediation and Arbitration Trust Fund appropriated by the legislature and by any other available sources such as grants and county revenues.

2. User fees shall be established pursuant to Fl.Stat. §44.108 (2009) and shall be collected by the Clerk of Court. The Clerk of Court shall provide an accounting of all collections to the ADR Director and court finance office on a monthly basis.

3. When the combined gross income of the parties is less than \$100,000.00, the case shall be eligible for use of the court Family Mediation Program services. The parties are presumed to have the ability to hire a private mediator when the combined gross income of the parties exceeds \$100,000.00 or greater, unless the court finds that there are extraordinary circumstances which make the parties unable to afford a private mediator.

4. In the event that payment for services is not made by a party in a timely manner, or if either party does not attend a scheduled mediation session or cancels a scheduled mediation

session, the parties shall remain responsible for his or her fee for that session as well as for any subsequently scheduled sessions. In the event that a party fails to appear at a scheduled mediation session without good cause, that party shall be responsible for the payment of both parties' mediation fees for the next scheduled mediation session. If a contract mediator is utilized, the contract mediator shall be compensated as authorized by the mediator's executed Professional Services Agreement with the court. Prior to the appointment of a contract mediator, the ADR Director shall determine that sufficient funds are available for that purpose.

V. PRIVATE, NON-PROGRAM MEDIATORS

In those cases involving parties who are not eligible for court Family Mediation Program services or those who choose not to use the court Family Mediation Program services, private mediators shall be utilized. Compensation of private mediators shall be paid by the parties as they agree in advance and in writing, or as otherwise ordered by the court. In the absence of an agreement providing for the mediator's compensation, the mediator shall be compensated at the hourly rate of the mediator's compensation within fifteen (15) days of the referral. On behalf of the Chief Judge, the ADR Director shall maintain a listing of private Supreme Court certified family mediators who have registered for appointment in this circuit and who are willing to serve the Eighth Judicial Circuit for private mediation referral purposes.

VI. STATISTICAL REPORTING FOR PROGRAM AND PRIVATE MEDIATORS

1. For statistical purposes and in order to assist in tracking the use of family mediation in the circuit, copies of mediation outcome reports shall be filed by the program mediator or contract mediator in the court file kept by the Clerk of Court and a copy shall be furnished to the circuit ADR Director.

2. For purposes of monitoring, developing, and improving the court Family Mediation Program, all parties ordered to mediation may be requested to provide statistical but non-identifying information or data on standardized forms regarding themselves, the mediators, and other administrative or procedural aspects of the mediation process. Results of such data may be published for statistical and administrative purposes, but shall 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 Fl.Stat. §44.401-406 (2009), regarding communications made during a mediation session.

VII. JUVENILE DEPENDENCY MEDIATION

1. A Juvenile Dependency Mediation Program shall be established in the circuit.
2. Only those cases referred by the court shall be processed through the Juvenile Dependency Mediation Program.
3. Except as otherwise provided by Fl.Stat. §44.401-406 (2009), 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.
4. 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, including contempt of court, assessment of mediator and attorney fees and other costs, the striking of pleadings or portions thereof and/or other appropriate sanctions.

VIII. DOMESTIC VIOLENCE LIMITED FAMILY MEDIATION

1. Disputed family matters are often at issue in cases where the court has decided that a permanent injunction against domestic violence should be entered. The issues remaining after the court has decided to enter the injunction may include child custody, care or visitation, as well as financial matters, and access to personal property. These matters may be mediated by the court Family Mediation Program in accordance with the policies and procedures established in the circuit's Domestic Violence Limited Family Mediation Protocol. The procedures for this program, including screening criteria, were established with significant input from the local domestic violence center (Peaceful Paths) in collaboration with the court Family Mediation Program, the Administrative Judge of the Family Law Division, and the Clerk of Court.

2. The issues to be mediated shall not include the domestic violence itself or the entry of an injunction against domestic violence.
3. Only those cases referred by the court shall be processed through the Domestic Violence Limited Family Mediation Program.
4. No cases shall be referred if the court finds there has been a significant history of domestic violence which would compromise the mediation process or endanger any participant in the process.
5. Any party referred to mediation by the court shall have the unconditional right to decline to participate or withdraw from mediation at any time and the case shall be returned to the court by the mediator without comment other than "no agreement reached."
6. Except as otherwise provided by Fl.Stat. §44.401-406 (2009), 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.

IX. DEPARTMENT OF REVENUE MEDIATION

Department of Revenue initiated cases may be mediated by the court Family Mediation Program in accordance with the policies and procedures established by the court Family Mediation Program, the Child Support Enforcement Hearing Program, and the Administrative Judge of the Family Law Division. Where such procedures conflict with the court Family Mediation Program procedures above, procedures established pursuant to this paragraph shall govern.

X. CHILDREN AND FAMILIES IN NEED OF SERVICES MEDIATION

1. Children and Families in Need of Services (CINSFINS) cases may be mediated by the court Family Mediation Program.

2. A case may be referred to mediation at any stage of the proceeding. The court may order mediation upon referral by the case staffing committee, by any of the parties or on its own.

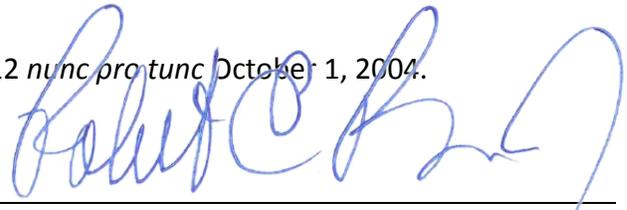
3. Except as otherwise provided by Fl.Stat. §44.401-406 (2009), verbal or written communication made during a mediation session other than an executed settlement agreement shall be confidential and inadmissible in subsequent legal proceedings. Confidentiality shall be strictly maintained in accordance with the law.

4. 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, including contempt of court, assessment of mediator and attorney fees and other costs, the striking of pleadings or portions thereof and/or other appropriate sanctions.

This order revises and supersedes Administrative Order No. 5.1070(D), entered 31 January 2005 *nun pro tunc* to 1 October, 2004.

This order renumbers and reformats prior Administrative Order No. 5.1070(E) entitled "Family Mediation Program."

ORDERED ON this 5th day of October, 2012 *nunc pro tunc* October 1, 2004.



Robert E. Roundtree, Jr., Chief Judge