

**IN THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO AND PINELLAS COUNTIES, FLORIDA**

ADMINISTRATIVE ORDER NO. 2011-006 PA/PI-CIR

RE: MEDIATION

The Sixth Judicial Circuit has provided for mediation services at least since small claims pretrial mediation services began in Pasco County in 1985 and in Pinellas County in 1986. The Court has several administrative orders governing different types of mediation, which the Court has amended and which need amendment again.

Therefore, in order to continue the existing Sixth Judicial Circuit mediation programs and provide for their efficient conduct, in accordance with Article V, section 2, Florida Constitution; Rule of Judicial Administration 2.215; section 43.26, Florida Statutes; and Florida Supreme Court Administrative Order AOSC09-19, it is hereby

ORDERED:

A. Administration of the Sixth Judicial Circuit Arbitration and Mediation Program

The Trial Courts Administrator is directed to provide a Program of court-provided mediation in accordance with this Administrative Order for juvenile dependency cases, small claims pretrial matters, county civil cases, and family law cases. The Program will perform such duties as assigned by the Chief Judge. The administrative judges and associate administrative judges may also assign duties to the Program that are consistent with this Order, as it relates to cases referred to mediation within their respective divisions.

Parties and their attorneys are directed to continue to conduct mediation of foreclosure actions in accordance with Administrative Order 2010-025 PA/PI-CIR or subsequent Administrative Order.

In addition to the mediation of foreclosure actions, the presiding judge may order parties to mediation in other circuit civil cases. The Program may provide services for such cases as authorized by this Administrative Order. The Trial Courts Administrator will not provide a program of court-provided mediation for circuit civil cases. When ordered, the parties will conduct such mediation in accordance with the order of referral, and will directly pay the mediator for his or her service.

“Court-provided mediation” as described in this Administrative Order refers to mediation conducted by a certified mediator who is under contract with and paid by the Court. Fees may be assessed for court-provided mediation in accordance with section 44.108, Florida Statutes, and this Administrative Order.

B. Mediation Program Responsibilities

The Program responsibilities mean the duties assigned in this Order to the Alternative Dispute Resolution Manager and staff in Pinellas County and the Diversion Programs Manager and staff in Pasco County. In support of mediation within the Sixth Judicial Circuit, on a continuing basis the Program will:

1. Provide administrative support to the Court in accordance with the Rules of Civil Procedure; Rules for Certified and Court-Appointed Mediators; Family Law Rules of Procedure; Rules of Juvenile Procedure; Florida Supreme Court Administrative Order AOSC09-19; and Chapter 44, Florida Statutes;
2. Establish scheduling policies for court-ordered mediation proceedings;
3. Promulgate the necessary forms for the administration of the Program, including form Orders of Referral for use by the Court in referring cases to mediation;
4. Maintain a list of mediators who are certified by the Florida Supreme Court and who are willing to serve the Court in such capacity in this Circuit;
5. Manage cases referred to mediation;
6. Maintain required statistical information;
7. Perform other functions as described in this and other applicable administrative orders, and such other duties as may be assigned to the Program; and
8. For each case referred to court-provided mediation, assign in rotation a mediator who is under contract with the Court. For non-court-provided mediation, the Program will also assign a contracted mediator in rotation when the parties do not timely select their own mediator in accordance with Family Law Rule of Procedure 12.741(b)(6)(A) or Rule of Civil Procedure 1.720(f)(1).

C. Conduct of Mediation

1. All Mediation:

- a. Mediation must be conducted in accordance with the applicable Rule of Procedure, the Florida Rules For Certified and Court-Appointed Mediators 10.200, *et seq.*, Chapter 44, Florida Statutes, the order of referral, and instructions of the Program regarding the mediation process. The presiding judge will hear all matters regarding mediation, including all motions.
- b. In each case of court-provided mediation, the mediator must be under contract with the Court. The mediator must also be certified in accordance with Rule 10, the Florida Rules for Certified and Court-Appointed Mediators, within his or her area of appointment. Contracted mediators are paid in accordance with the terms and rates specified in the contract with the Court. The mediator may accept only the compensation provided by the terms of the contract.
- c. Parties may opt-out of court-provided mediation. In that case, the parties must still comply with the order of referral and will pay the mediator's fee directly to the mediator.

- d. On motion or request of a party or on its own motion, a judge will not refer any case to mediation if it finds there has been a history of domestic violence that would compromise the mediation process, or for other good cause shown.
- f. Failure to appear at a duly noticed mediation conference without good cause shown may result, on motion, in the imposition of sanctions including an award of mediator and attorney fees and other costs against the party failing to appear.
- g. When mediation fees are due for court-provided mediation in accordance with this Administrative Order and section 44.108, Florida Statutes, the Clerk of Circuit Court for Pasco County and the Clerk of Circuit Court for Pinellas County must collect those fees from the parties in addition to any filing fees required by section 44.108, Florida Statutes. The Clerk must not collect fees from a person who is determined indigent by the presiding judge, from a person who was determined indigent by the Clerk in the current proceeding, or a person who was determined indigent in another proceeding in the Sixth Judicial Circuit within the previous six months. Any party may pay any other party's mediation fee. A mediation fee collected from any party is refundable only when the presiding judge vacates the order of referral, or when the Clerk accepts payment in excess of the mediation fee provided in this Order.

2. Juvenile Dependency Mediation: When ordered by a judge, parties must participate in mediation of any juvenile dependency matter arising under Chapter 39, Florida Statutes. On order of referral to mediation, the Program will assign a Certified Dependency Mediator to conduct the mediation. Fees are not to be assessed for dependency mediation.

3. Small Claims Pretrial Mediation: When ordered by a judge or by a small claims hearing officer, parties must participate in court-provided mediation for the mediation of any matter referred by the judge or hearing officer. At the direction of the County Administrative Judge, the Program will assign Certified County Mediators to small claims pretrial calendars to conduct these mediations. Fees are not to be assessed for small claims mediation.

4. County Civil Mediation:

- a. When ordered by a judge, parties must participate in mediation of county civil cases.
- b. Court-provided mediation will be available in county civil cases when referred by the presiding judge and the judge has determined that a party lacks the ability to pay the mediator's fee. On order of referral to mediation, the Program will assign a Certified County Mediator to conduct the mediation. Each party who will participate in court-provided county civil mediation will pay a fee of \$60.00 per mediation session to the Clerk of Circuit Court. Parties who are eligible for court-provided mediation may opt to obtain private mediation, in which case the mediation fee will not be assessed. A husband and wife who are either both defendants or both plaintiffs in a suit are one "party" for purposes of the mediation fee. Fees are not to be assessed for eviction cases.

c. In each case referred to court-provided mediation, the Program will monitor payments of mediation fees, scheduling, and completion of mediation.

i. When the parties in a suit have been determined eligible for court-provided mediation and at least one party is either indigent or has paid the required fee, the Program will issue a “Notice of Mediation Conference” informing the parties of the scheduled mediation conference. A non-indigent party who has not paid his or her required mediation fee by the time of a mediation conference will, prior to beginning the mediation conference, execute a form agreement to pay the fee. The mediator will file the form with the report of mediation. Such forms will be supplied to all mediators under contract with the Court.

ii. When the parties have not paid the mediation fees within 20 days of the order of referral, the Program will issue a “Notice to Comply with Court-Provided Mediation” to the parties, which advises the parties to pay the fee within 10 days of the date of the Notice. If the mediation fees are not paid by at least one of the parties within that 10 days and neither party has been found indigent, the parties are deemed ineligible for court-provided mediation. At that time, the Program will select a mediator by rotation from the Program’s list of Certified County Court mediators. The parties will then compensate the mediator as if the parties had privately retained the mediator.

d. Parties eligible for court-provided mediation who opt for private mediation and parties who are not eligible for court-provided mediation will select and retain their own mediator and hold a mediation conference in accordance with the order of referral. In such cases, the parties must compensate the mediator at the rate agreed to by the mediator and the parties. If the parties do not select their own mediator in accordance with Rule of Civil Procedure 1.720(f)(1) within 10 days of the order of referral, the Program will select a mediator by rotation, who the parties will then compensate as if the parties had privately retained the mediator. Whether the parties or the Program selects the mediator, in the absence of a written agreement providing for the mediator's compensation, the parties will pay the mediator at the rate of not more than \$150.00 per hour.

e. In Pinellas County the presiding judge may refer certain county civil cases for court-provided mediation by a Certified County Mediator on a day that the Court provides small claims pretrial mediation services. The presiding judge may only refer parties to this mediation after determining that the parties lack the ability to pay the mediator’s fee. On order of referral, the parties must pay and the Clerk must collect the \$60.00 fee per party per mediation session that is prescribed for other cases referred to court-provided county civil mediation. The Program will assign the parties to a mediator who is performing small claims pretrial mediation on the same day. Such

mediation will be conducted in accordance with the order of referral and in accordance with the direction of the Pinellas County Administrative Judge.

f. A “session” for court-provided mediation is one scheduled mediation. The mediator must obtain the written consent of all parties to continue mediation beyond the initial session. Such consent must contain a statement from the parties that they understand an additional mediation fee must be paid by each non-indigent party to the Clerk of the Circuit Court pursuant to section 44.108, Florida Statutes. If the mediator reports an impasse between the parties or recommends another conference, any subsequent mediation conference is another “session” and will require the parties to pay their respective fees prior to mediation.

g. After a case is referred to mediation, counsel of record and pro se litigants must prepare and present any appropriate judgment, order, or notice of dismissal or stipulation of the parties in accordance with the mediated settlement.

5. Family Mediation:

a. When ordered by the presiding judge, or when automatically referred to mediation in accordance with this Administrative Order, parties must participate in mediation of family cases.

b. Court-provided mediation will be available in family cases when referred by the presiding judge or automatically referred by this Administrative Order, and the parties combined gross income is less than \$100,000. Parties in family cases whose combined gross income is \$100,000 or more are not eligible for court-provided mediation, but may still be ordered to mediation, either by the presiding judge or by automatic referral. To determine eligibility for court-provided family mediation and the appropriate amount that each party must pay, each party must submit a current Florida Family Law Financial Affidavit (Family Law Forms 12.902 (b) or 12.902 (c)), an Affidavit of Income for Purposes of Establishing Mediation Fees, or a Financial Affidavit to the Program within ten (10) days of the order of referral. All of the forms may be obtained online at www.jud6.org. A party determined indigent in the present case or in another case in the Sixth Judicial Circuit within the last six months may rely on that determination by notice through letter and a copy of that determination to the Program and other parties.

c. The Program will issue a “Notice of Referral to Mediation” to the parties when court-ordered mediation has not been assigned to a mediator within 20 days of the order of referral. The written Notice will inform the parties that within 10 days of the date of the Notice, each must:

- (i) file financial information with the Program to determine eligibility for court-provided mediation, and if eligible, provide the Program with evidence of payment of his or her applicable fee;

(ii) file financial information with the Program to determine eligibility for court-provided mediation and, if not eligible, agree on and select a privately retained mediator and schedule a mediation conference; or

(iii) agree on and select a privately retained mediator and schedule a mediation conference.

If one party has filed financial information with the Program that indicates he or she may be eligible for court-provided mediation, but the other party has not completed any of the above actions within 10 days of the date of the written Notice of Referral to Mediation, the Program will inform the presiding judge of the other party's failure to cooperate. The presiding judge may set the case for a show-cause hearing or take other action as the presiding judge determines appropriate to facilitate resolution of the case. If no party completes any of the actions in this subparagraph within 10 days of the date of the Notice of Referral to Mediation, the parties will be deemed ineligible for court-provided mediation. At that time, the Program will select a mediator by rotation from the Program's list of Certified Family mediators. The parties will then compensate the mediator as if the parties had privately retained the mediator.

d. Each party who will participate in court-provided family mediation will pay the following mediation fees:

i. \$120.00 per person per session in family mediation when the parties' combined gross income is \$50,000 or more, but less than \$100,000 per year; or

ii. \$60.00 per person per session in family mediation when the parties' combined gross income is less than \$50,000 per year. Parties who are eligible for court-provided mediation may opt to obtain private mediation, in which case the mediation fees above will not be assessed.

e. In each case referred to court-provided mediation, the Program will monitor payments of mediation fees, scheduling, and completion of mediation.

i. When the parties in a suit have been determined eligible for court-provided mediation and at least one party has paid the required fee or been found indigent, the Program will issue a "Notice of Mediation Conference" informing the parties of the scheduled mediation conference. A non-indigent party who has not paid his or her required mediation fee by the time of a mediation conference will, prior to beginning the mediation conference, execute a form agreement to pay the fee. The mediator will file the form with the report of mediation. The Program will supply such forms to all mediators under contract with the Court.

ii. When parties who are eligible for court-provided mediation have not paid the mediation fees within 20 days of that determination, the Program will issue a "Notice to Comply with

Court-Provided Mediation” to the parties, which advises the parties to pay the fee within 10 days of the date of the Notice. If the mediation fees are not paid by at least one of the parties within 10 days, the parties are deemed ineligible for court-provided mediation. At that time, the Program will select a mediator by rotation from the Program’s list of Certified Family mediators. The parties will then compensate the mediator as if the parties had privately retained the mediator.

f. Parties eligible for court-provided mediation who opt for private mediation and parties who are not eligible for court-provided mediation will select and retain their own mediator and hold a mediation conference in accordance with the order of referral. In such cases, the parties must compensate the mediator at the rate agreed to by the mediator and the parties. If the parties do not select their own mediator in accordance with Family Law Rule of Procedure 12.741(b)(6)(A) within 10 days of the order of referral, the Program will select a mediator by rotation, who the parties will then compensate as if the parties had privately retained the mediator. Whether the parties or the Program selects the mediator, in the absence of a written agreement providing for the mediator's compensation, the parties will pay the mediator at the rate of not more than \$150.00 per hour.

g. Automatic referral of family law cases in Pinellas County:

i. In all St. Petersburg and Clearwater family law sections, except as provided herein, all post judgment matters and temporary support matters are automatically referred to mediation. Cases excluded from automatic referral to mediation are those where the Department of Revenue is a party, and any case seeking contempt for failure to pay court-ordered or stipulated child support, or court-ordered or stipulated alimony.

ii. This Administrative Order serves as the Order of Referral for family cases automatically referred to mediation, as if an Order of Referral was entered in each individual case.

iii. Notwithstanding the mediation mandated by this Order, each judge retains the discretion to waive the mandates herein on a case-by-case basis, including those cases where on motion or request of a party or on its own motion, the presiding judge finds that there has been a history of domestic violence that would compromise the mediation process.

h. A “session” for court-provided mediation is one scheduled mediation. The mediator must obtain the written consent of all parties to continue mediation beyond the initial session. Such consent must contain a statement from the parties that they understand an additional mediation fee must be paid by each non-indigent party to the Clerk of the Circuit Court pursuant to section 44.108, Florida Statutes. If the mediator reports an impasse between the parties or recommends another conference, any subsequent mediation conference is another “session” and will require the parties to pay their respective fees prior to mediation.

- i. After a case is referred to mediation, counsel of record and pro se litigants must prepare and present any appropriate judgment, order, or notice of dismissal or stipulation of the parties in accordance with the mediated settlement.

Administrative Order 2005-005 PA/PI-CIR “Civil and Family Mediation”; Administrative Order 2005-032 PA/PI-CIR “Juvenile Dependency Mediation Appointment & Compensation”; Administrative Order 2006-062 PI-CIR “Automatic Referral to Family Mediation”; Administrative Order 2007-030 PA/PI-CIR “Mediation Program”; and Administrative Order 2008-034 PA/PI-CIR “Family Mediation – Additional Changes” are hereby rescinded.

Administrative Order 2005-030 PA/PI-CIR “Small Claims Pretrial Hearings and Mediation” is amended to reflect that the rate of compensation for small claims pretrial mediators is set by contract with the Court; the rate of compensation is no longer set by Administrative Order. All other terms and conditions of Administrative Order 2005-030 remain in full force and effect.

DONE AND ORDERED in Chambers at Clearwater, Pinellas County, Florida, this _____ day of March, 2011.

ORIGINAL SIGNED March 1, 2011
BY J. THOMAS MCGRADY, CHIEF JUDGE

cc: All Judges
The Honorable Bernie McCabe, State Attorney
The Honorable Bob Dillinger, Public Defender
The Honorable Ken Burke, Clerk of the Circuit Court, Pinellas County
The Honorable Paula S. O’Neil, Clerk of the Circuit Court, Pasco County
John Hendry, Regional Counsel
Gay Inskeep, Trial Courts Administrator
Nichole Alvarez-Sowles, Chief Operations Officer, Pasco County Clerk’s Office
Myriam Irizarry, Chief Deputy Director, Pinellas County Clerk’s Office
Lillian Simon, Acting Director of Administrative Services for Pasco County
Bar Associations, Pasco and Pinellas Counties
Law Libraries, Pasco and Pinellas Counties