

THE MEDIATION PROCESS
INSTRUCTIONS FOR AUTOMATIC REFERRALS IN FAMILY LAW CASES

Authority: Pursuant to §44.1011 and 44.108 Fla. Stat., and Fla. Fam. L. R. P. 12.740, *et seq.*, judges have the authority to order all contested family matters and issues to mediation. On February 9, 2005, Administrative Order No. 2005-005 PA/PI-CIR was adopted to implement changes to the Sixth Judicial Circuit's mediation programs.

Pursuant to Administrative Order No. 2006-062 PI-CIR and 2008-034 PA/PI-CIR, you have been ordered to Family Mediation.

Effective July 1, 2005, in the St. Petersburg sections of the Family Law Division, and April 1, 2008 in the Clearwater sections, all post judgment and all initial hearings on temporary relief matters in original petitions shall be automatically referred to mediation prior to a hearing on the matter.

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.

Upon motion, or request of a party, a court shall have the discretion to 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 good cause shown.

An affidavit is available from the mediation program for objecting to the automatic referral for a history of domestic violence or other reasons that the case should not proceed to mediation.

To help make mediation more accessible to all parties, Chapter 2004-265, Laws of Florida, amended 44.108 Florida Statutes. Through funding for the State Court System, the Sixth Judicial Circuit will implement Fl Stat 44.108 with a mediation model that provides paid family and county civil mediation services to certain parties.

Definition: Mediation is statutorily defined as "...[A] process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties."

It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decision making authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives.

The mediator has no decision making power. Any agreement reached will be by mutual consent of the parties. A written agreement that is signed may be filed and submitted to the court with the parties consent.

Special Rules or Procedures: Parties eligible for court provided mediation may select either privately retained mediation or court provided mediation services. If parties select court provided mediation, the mediator shall be chosen by rotation by Program staff. Parties not eligible for court provided mediation shall select their own mediator and hold a mediation conference. In accordance with Family Law Rule of Procedure 12.741 (b)(6)(A) and Rule of Civil Procedure 1.710(f)(1),

eligible and non-eligible parties may choose their own mediator; however the selection must occur within ten(10) days from the date of the order.

Court Provided Mediation Services for Automatic Referrals to Mediation

To determine eligibility for court provided mediation, both parties must submit a Family Law Financial Affidavit 12.902(b)-Short Form or 12.902(c) upon receipt of this notice that is no more than six months old. The forms can be obtained online at www.jud6.org/RepresentingYourself/ApprovedForms/902b.pdf or www.jud6.org/RepresentingYourself/ApprovedForms/902c.pdf.

An income statement available from the mediation staff may be submitted for the sole purpose of determining eligibility for court provided mediation.

The Family Law Financial Affidavits and income statements must be notarized.

For St. Petersburg cases, mail them to the Mediation Program at 501 First Avenue North, Room 420, St. Petersburg, FL 33701, or fax them to (727) 582-7562.

For Clearwater cases, mail them to the Mediation Program at 315 Court Street, Room 401, Clearwater, FL 33756, or fax them to (727) 464-3100.

The section judge will review the completed affidavits, and make a determination of eligibility.

If you are eligible for court provided mediation, you will receive an order of referral to mediation and the name of the assigned mediator. You shall have ten days to pay the clerk the required mediation fee, and schedule the date time and location of the mediation conference.

You must contact the Program at (727) 582-7206 (for St. Petersburg cases) or (727) 464-4947 (for Clearwater cases) with the scheduled mediation date, time and location within the specified ten days. If you do not contact the Program with the scheduled mediation date within the ten days, you will be given another ten days to select a private mediator at an agreed upon rate of pay that you will pay directly to the mediator. If you fail to notify the Program with this information, within ten days, the Program will select a private mediator by rotation, set the date, time and location of the mediation without contacting the parties, at the rate of not more than \$150.00 per hour.

Important: Keep and bring receipt of payment to the mediation conference.

Court-Provided Mediation

Fees are established by statute and are as follows:

\$60.00 per person per session in family mediation when the parties' combined gross income is less than \$50,000.00 per year.

\$120.00 per person per session in family mediation when the parties' combined gross income is greater than \$50,000.00 but less than \$100,000.00 per year.

Any party may pay any other party's mediation fee. A mediation fee collected from any party is nonrefundable.

Program staff will select a conference room in one of the court facilities on a space available basis. Staff will also prepare notices reflecting your coordinated date and assigned mediator that will be mailed to both parties and the mediator.

Mediation conferences can typically last three hours and are usually schedule from 9:00a.m. – 12:00pm or 1:00pm – 4:00 pm. unless otherwise requested.

If you are deemed ineligible for court-provided mediation, you will be notified by mail. Information for selecting a privately retained mediator is provided below.

Private Mediation

If the parties choose their own mediator, they may select a mutually acceptable mediator from the list of certified mediators upon a stipulation with the court or by selecting a mediator who does not meet the certification requirements, but who, in the opinion of the parties and upon review by the presiding judge, is otherwise qualified by training or experience to mediate all or some of the issues in the particular case. The parties and the mediator agree upon a fee, and pay the mediator at the time of the mediation.

The parties must coordinate with the mediator a date and time of mediation and notify the Program. Program staff will select a conference room for your use on a space available basis. Staff will also prepare notices reflecting your coordinated date and mediator selection. Mediation conferences generally last three hours and are scheduled from 9:00 a.m. until 12:00 p.m. or 1:00 p.m. until 4:00 p.m., unless otherwise requested. Please see page 3 for more detailed information regarding our scheduling policies.

Procedures Applicable to Both Court- Provided Family Mediation and Private Family Mediation

Affidavit - Automatic Referral to Mediation

A party may object to automatic referral to mediation pursuant to Administrative Order No. 2006-062 PI-CIR and 2008-034.

To file an objection to the automatic referral to mediation, a party must complete the affidavit available from the mediation program.

The notarized affidavit must be returned to mediation program staff within ten days.

The section judge will review the completed affidavit.

The party will be notified by mail concerning the outcome of the request.

For St. Petersburg cases, return the affidavit to 501 First Avenue North, Room 420, St. Petersburg, FL 33701, or fax it to (727) 582-7562.

For Clearwater cases, return the affidavit to 315 Court Street, room 401, Clearwater, FL 33756, or fax it to (727) 464-3100.

Appearances: Unless otherwise stipulated by the parties, a named party must be physically present at the mediation conference. In the discretion of the mediator, and with the agreement of the parties, mediation may proceed in the absence of counsel unless otherwise ordered by the court.

The Conference: ATTORNEYS SHOULD SUBMIT A BRIEF WRITTEN SUMMARY OF THE FACTS/ISSUES OF THE CASE TO THE MEDIATOR AT LEAST ONE WEEK BEFORE THE SCHEDULED CONFERENCE. During the conference, counsel should be prepared to discuss the facts and legal issues involved in the case and to generally help the parties evaluate the case. The ultimate decision making authority of whether or not to settle the case rests with the parties, with the advice of counsel.

IMPORTANT: The parties **shall** bring a copy of their financial affidavits to the mediation. If the case involves child support, the parties **shall** bring to the mediation conference a Child Support Guidelines Worksheet in substantial conformity with Florida Family Law Form 12.902 (e).

Upon motion or request of any party, the Court will not refer a case to mediation if it finds there has been a history of domestic violence that would compromise the mediation process. The Court on its own motion may determine that a case will not be referred to mediation because of a history of domestic violence.

Your mediator will be explaining the process in greater detail the day of the conference. In the meantime, if you have any questions about these or any other court-ordered mediation procedures, you should call the mediation program at (727) 582-7206 for a St. Petersburg case, or (727) 464-4947 for a Clearwater case.

PLEASE READ CAREFULLY

Scheduling, rescheduling and cancellations: The rules require that mediation be completed within 75 days of the initial mediation conference unless otherwise ordered by the court. The initial mediation conference shall be held within sixty (60) days of the signed referral order, unless otherwise ordered by the court.

The party or attorney who is requesting that a mediation session be rescheduled must obtain consent from opposing counsel and the assigned mediator. ***The Program must also be notified of any rescheduling attempts.*** If opposing counsel and/or the mediator do not give consent to reschedule the conference, the attorney must apply for relief through the presiding judge prior to the scheduled conference. Cancellation (with no attempt to reschedule) of the mediation conference will only be permitted where one or both parties have applied for relief from the presiding judge and has had the case properly deferred or removed from mediation. **NO OTHER UNILATERAL CANCELLATION OR RESCHEDULING WILL BE PERMITTED AND IS A VIOLATION OF THE COURT'S ORDER TO ATTEND.**

Notifying the Mediator: The mediator must be notified at least forty-eight (48) hours in advance (not including weekends and holidays) of any rescheduling or cancellation, for whatever reason. If the late cancellations was due to a unilateral request through the court for a continuance or deferment, the moving party will be assessed the entire cancellation fee. If the late rescheduling was due to a stipulation between parties, any fee charged by the mediator (excludes cases involving a court mediator) will be divided equally between or among them.

Settlement Prior to Mediation: Settlement before mediation is always encouraged but is still considered a cancellation. Consequently, the forty-eight (48) hours notice requirement applies. It is the responsibility of plaintiff's counsel to notify the Program and the mediator in a timely manner of any settlement before the initial conference. Written confirmation is required by the court order.

Payment: If the parties are utilizing court provided mediation, the required fee must be paid prior to the mediation conference at an Office of the Clerk of Circuit Court.

Locations:

545 First Avenue North, First Floor, St. Petersburg, FL 33701 and

315 Court Street, First Floor, Clearwater, FL 33756.

Mediation program staff cannot accept any fees.

If the parties choose their own private mediator, in the absence of a written fee agreement providing for the private mediator's compensation, the mediator shall be paid at the rate of not more than \$150.00 per hour. Payment of the agreed fee is due to the mediator on the day of the mediation conference.

08/07/09