

IN THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR THE STATE OF FLORIDA

IN RE: COURT-ORDERED MEDIATION
IN CIRCUIT CIVIL, FAMILY,
DEPENDENCY, AND COUNTY
COURT CIVIL CASES

ADMINISTRATIVE ORDER
NO. 1.16

LEE CO. FLORIDA
CLERK OF COURTS
D.C.

JUN 13 2013

FILED

WHEREAS, certain contested civil and domestic disputes can be amicably and expeditiously resolved through mediation prior to hearing by the Court; and

WHEREAS, mediation is a process whereby a neutral third person acts to encourage the resolution of disputes through a non-adversarial process and assists the parties in reaching a mutually acceptable agreement; and

WHEREAS, the mediation process can result in cost efficiencies to the parties and the Court; and

WHEREAS, mandatory mediation for certain matters increases the availability of judicial resources; and

WHEREAS, the use of mediation is necessary for the prompt and efficient administration of justice in the Courts of the Twentieth Judicial Circuit;

Now therefore, pursuant to the authority vested in the Chief Judge by Rule 2.215 of the Florida Rules of Judicial Administration, and for the purpose of formally memorializing the established procedures utilized within the Twentieth Judicial Circuit,

It is hereby **ORDERED** as follows:

1. COURT MEDIATION PROGRAM:

The Court Mediation Program serves the purpose of facilitating mediation of allowed contested matters in Circuit Civil, Family, Dependency, and County Court Civil cases. This program is conducted under the direction of the Administrative Office of the Courts, the Court Administrator, and the Chief Judge of the Twentieth Judicial Circuit. The program is governed by applicable Florida Statutes, Rules of Procedure, and local rules.

2. PROGRAM COVERAGE:

- a. Charlotte County: This program offers dispute resolution services in Small Claims Court through the use of Florida Supreme Court certified County Court mediators, who serve as volunteers. Florida Supreme Court certified Circuit Civil, Family, Dependency, and County Court mediators, who are compensated, mediate Circuit Civil, Family, Dependency, and County Court Civil cases above Small Claims Court jurisdiction. Circuit Civil mediators do not have contracts with the Court. All other compensated mediators have contracts with the Court and are assigned cases based

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upon party request, individual competencies, qualifications, or subject matter expertise.

- b. Collier County: This program offers dispute resolution services in Small Claims Court through the use of Florida Supreme Court certified County Court mediators, who serve as volunteers. This program further offers dispute resolution services through the use of a Florida Supreme Court certified staff mediator who addresses Family, County Court Civil, and Small Claims Court cases. In the event no staff mediator is available, contract mediators certified by the Florida Supreme Court will mediate cases for compensation, and will be assigned cases based upon party request, individual competencies, qualifications, or subject matter expertise.
- c. Lee County: This program offers dispute resolution services in Small Claims Court through the use of Florida Supreme Court certified County Court mediators, who serve as volunteers. Florida Supreme Court certified Circuit Civil, Family, Dependency, and County Court mediators, who are compensated, mediate Circuit Civil, Family, Dependency, and County Court Civil cases above Small Claims Court jurisdiction. Circuit Civil mediators do not have contracts with the Court. All other compensated mediators have contracts with the Court, and are assigned cases based upon party request, individual competencies, qualifications, or subject matter expertise.
- d. Hendry and Glades Counties: Dispute resolution services are provided by the Lee County Mediation Program.

3. CONTACT INFORMATION:

- a. Court Mediation Programs: Mediation services can be obtained by contacting the Court Mediation Program in the appropriate county. Below is the contact information for each county's Court Mediation Program. The addresses listed below shall be used for all notices to be served on the Court Mediation Program:

Charlotte County: Charlotte County Court Mediation Program, Charlotte County Justice Center, 350 East Marion Avenue, Punta Gorda, Florida 33950.
Telephone: (941) 637-2281

Collier County : Collier County Court Mediation Program, Collier County Government Complex, 3315 Tamiami Trail E, Suite 504, Naples, Florida 34112.
Telephone: (239) 252-8704

Lee County: Lee County Court Mediation Program, Lee County Justice Center, 1700 Monroe Street, Ft. Myers, Florida 33901. Telephone: (239) 533-3353

Hendry and Glades Counties: Contact the Lee County Court Mediation Program for mediation of cases in these counties.

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- b. Current Contact Information of Parties/Attorneys: Parties and their attorneys, if represented, are required to provide their current address and telephone number to the Court for inclusion in the court file. If mediation has been court-ordered, the parties and attorneys, if represented, shall provide the Court Mediation Program with their current address and telephone number if there has been a change.

4. AUTHORITY TO REFER TO MEDIATION:

Pursuant to Chapter 44, Florida Statutes, Fla. R. Civ. P. 1.700, et seq., Fla. R. Juv. P. 8.290, and Fla. Fam. L. R. P. 12.740 and 12.741, the Court, on its own motion, may refer all or any part of a filed civil action, including family matters, to mediation for the purpose of resolution of any contested issue. Family matters, including married and unmarried persons before and after judgments involving dissolution of marriage, shared or sole parental responsibility, child residency, child support, payment of alimony, child visitation, or distribution of property, involving emotional or financial considerations may be referred to mediation. Any party may request referral to mediation within the limitations established by statute or rule. However, in accordance with Fla. R. Civ. P. 1.710(b), under no circumstances may bond estreatures, bond validations, petitions for extraordinary writs, or contempt actions be referred to mediation.

All qualified contested Circuit Civil, Family, and County Court Civil cases will be automatically referred to an Alternative Dispute Resolution process within limitations established by statute or rule, unless waived by the presiding judge. Dependency Court cases will be referred to mediation upon order of the presiding judge.

5. EXCEPTION: HISTORY OF DOMESTIC VIOLENCE:

Pursuant to section 44.102(2)(c), Florida Statutes, upon motion or request of a party, 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. If such an issue exists, the party shall contact and advise the Court Mediation Program.

6. LIST OF MEDIATORS:

A list of Florida Supreme Court certified mediators is maintained by the Florida Supreme Court's Dispute Resolution Center and is available on the Florida State Courts' website (www.flcourts.org). The list identifies individuals by their area of certification and location of where they wish to mediate. Certified mediators participating in the Court Mediation Program who mediate Family, Dependency, and County Court Civil cases above Small Claims Court, shall have a contract with the Court to provide this service. The Administrative Office of the Courts of the Twentieth Judicial Circuit administers all contracts and maintains a record of those individuals who have a contract.

7. APPOINTMENT OF MEDIATORS:

In cases of court-ordered mediation, the parties have ten (10) days from the Mediation Order of Referral to select a mediator and notify the Court Mediation Program of the

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selection. If the parties have not agreed on a mediator, the Court Mediation Program or presiding judge shall appoint a Florida Supreme Court certified mediator to mediate the case. If the parties choose to use a private mediator, they shall notify the Court as to the date of mediation and the identity of the mediator. In Small Claims Court cases, the mediator will be assigned on the day of the pretrial conference.

In Collier County, the staff mediator will mediate cases referred to the Court Mediation Program. Cases not referred to the Court Mediation Program will be mediated by a mediator selected by the parties or by the presiding judge based on individual mediator competence, qualification or subject matter expertise. In the absence of a staff mediator, cases referred to the Court Mediation Program will have a contract mediator assigned based on a request of the parties or by individual mediator competence, qualification or subject matter expertise. Mediators in Small Claims Court cases shall be assigned randomly.

In Charlotte, Hendry, Glades and Lee Counties, contract mediators will mediate cases referred to the Court Mediation Program. In cases referred to the Court Mediation Program, mediators will be selected based on a request of the parties or by individual mediator competence, qualification or subject matter expertise. Cases not referred to the Court Mediation Program will be mediated by a mediator selected by the parties or by the presiding judge based on individual mediator competence, qualification or subject matter expertise. Mediators in Small Claims Court cases shall be assigned randomly.

8. NOTICE OF CANCELLATION BY PARTY:

In order to cancel court-ordered mediation, the requesting party or parties must do one of the following at least three (3) full business days prior to the scheduled mediation, excluding the date of mediation:

- a. File a motion with the Court requesting cancellation of the mediation, with notice being given to the Court Mediation Program;
- b. Provide documentation to the Court and the Court Mediation Program that all current issues have been mediated and an impasse has been declared;
- c. Provide documentation to the Court and the Court Mediation Program that a private mediation has been scheduled, providing the name of the mediator and the date of the mediation;
- d. Provide documentation to the Court Mediation Program that a default has been entered; or
- e. Provide documentation to the Court Mediation Program that the presiding judge has cancelled the mediation.

If appropriate notice of cancellation is not provided to the Court Mediation Program at least three (3) full business days prior to the date of the scheduled mediation, excluding

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the date of mediation, payment of a late cancellation fee may be required. If the late cancellation fee is not paid, an Order to Show Cause may be issued requiring the party to appear before the Court to answer to the nonpayment, and the Court may assess additional sanctions against the party. A fee paid as a late cancellation fee shall not be applied as payment for any subsequently scheduled mediation.

9. CANCELLATIONS, RESCHEDULING, AND CONTINUANCES BY THE PARTIES:

a. Cancellations: A mediation session must be cancelled by order of the Court if required by the presiding judge, or by stipulation of the parties if no order is required by the presiding judge. The written order or stipulation of cancellation shall be provided to the Court Mediation Program at least three (3) full business days prior to the mediation date, excluding the date of mediation. Failure to provide timely written notification to the Court Mediation Program may result in the assessment of a late cancellation fee.

b. Late Cancellation Fee:

(1) Family and County Court Civil: In Family law cases in which the parties have a combined income of less than \$100,000.00 per year, and in County Court Civil cases, if mediation is not cancelled at least three (3) full business days prior to the mediation date, excluding the date of mediation, with documentation of cancellation being provided to the Court Mediation Program, a late cancellation fee equal to each parties' session fee may be assessed. This fee shall be paid to the Clerk of Court and shall not be applied to any future mediation. In Family law cases in which the parties have a combined income is \$100,000.00 or more per year, if mediation is not cancelled at least three (3) full business days prior to the mediation, exclusive of the date of mediation, with documentation of cancellation being provided to the Court Mediation Program, the parties may be assessed a two (2) hour late cancellation fee. The fee shall be paid directly to the assigned mediator, and shall not be applied to any subsequently scheduled mediation. Additional sanctions may be levied by the Court for a mediator's enforcement of the late cancellation fee.

(2) Circuit Civil: If mediation is not cancelled at least three (3) full business days prior to the mediation date, excluding the date of mediation, with documentation of cancellation being provided to the Court Mediation Program, the parties may be assessed a two (2) hour late cancellation fee. The fee shall be paid directly to the assigned mediator, and shall not be applied to any subsequently scheduled mediation. Additional sanctions may be levied by the Court for a mediator's enforcement of the late cancellation fee.

c. Cancellation; attorney called to trial: If an attorney is called to trial less than three (3) business days before a scheduled mediation session, the attorney must immediately notify the other party and the Court Mediation Program. For verification purposes the notification shall include the case number and name of the presiding judge of the conflicting case. If such notice is received by at least 3:30 p.m. on the business day

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that precedes the mediation date, only one-half the normal late cancellation fee is required. Notice received after 3:30 p.m. on the business day that precedes the mediation date may necessitate payment of the full late cancellation fee.

- d. Rescheduling: In order to reschedule a Family, Dependency or County Court Civil mediation, the parties are required to provide the Court Mediation Program with a firm rescheduled date agreeable to all parties. The rescheduled date shall be no more than thirty (30) days from the current mediation date. In Family and County Court Civil cases in which there have been more than two (2) rescheduled dates, the parties may be subject to a rescheduling fee equal to the cost of one (1) session of mediation.
- e. Continuances by the Parties: A continued mediation occurs when the mediator gives an opening statement and the parties agree to begin another mediation session at a subsequent time. Fees paid for the initial session shall not be applied to any subsequent session.

10. ATTENDANCE OF PARTIES AND COUNSEL:

- a. Parties: Each named party shall appear at any scheduled mediation session, unless that party has been dismissed from the case or has been dismissed from attendance by the presiding judge. A party is deemed to appear at mediation if that party is physically present at the commencement of the mediation or has appeared telephonically with written permission of the presiding judge. Upon the Court's own motion, or upon motion of the appearing party or the Court Mediation Program, a party's failure to appear for the mediation session may result in sanctions being imposed by the Court against the non-appearing party, including, but not limited to, payment of session fees and attorney fees, if any. These fees shall not be applied to any subsequently scheduled mediation. If an indigent party fails to appear at mediation, sanctions, including cost of a mediation session for both parties, shall be assessed.
- b. Family Cases; counsel: In Family law cases, the mediation session may proceed in the absence of counsel, unless otherwise ordered by the Court. Parties in Family law cases are not required to have counsel.
- c. Dependency Cases; counsel: In Dependency cases, parties' counsel are required to attend mediation unless dismissed by the presiding judge.
- d. Circuit Civil Cases: In Circuit Civil cases, it is mandatory that the following persons be physically present at mediation, unless specifically provided otherwise by the Court:
 - (1) The party or its representative, other than its outside counsel, having full authority to settle without further consideration, shall attend.
 - (2) The party's counsel of record, if any, shall attend. If another attorney will try the case, the attorney who will try the case shall also attend.

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(3) If insurance is involved, a representative of the insurance carrier for any insured party, who is not such carrier's outside counsel and who has full authority to settle without further consultation, shall attend.

(4) If a party to mediation is a public entity required to conduct its business pursuant to Chapter 286, Florida Statutes, that party shall be deemed to appear at a mediation conference by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body of the entity. See Fla. R. Civ. P. 1.720.

11. APPEARANCE BY TELEPHONE:

In case of an emergency, in the event of physical disability, when a party is incarcerated, or when a party resides in excess of one-hundred (100) miles from the Mediation Program location, that party may request an appearance by telephone. Requirements established by the presiding judge will dictate what actions are required when a party wishes to appear by telephone at a mediation conference.

12. CONFIDENTIALITY OF COMMUNICATIONS DURING MEDIATION:

In accordance with sections 44.401-44.406, Florida Statutes, known as the Mediation Confidentiality and Privilege Act, with the exception of the parties' signed financial affidavits and any other documents which are required to be filed in the public record, all communications, verbal or written, between the parties and from the parties made during the mediation session, shall be confidential. Confidentiality is to be strictly maintained in accordance with the law. The privileges and exceptions provided for by the Mediation Confidentiality and Privilege Act apply in all cases, and nothing herein shall be construed as limiting or expanding those privileges and exceptions. Civil remedies for violating the Mediation Confidentiality and Privilege Act are provided for by section 44.406, Florida Statutes.

13. PROFESSIONALISM OF MEDIATORS:

Mediators shall abide by all standards of professional conduct established by the Florida Supreme Court. Mediators are not authorized to conduct, communicate, nor submit evaluations or recommendations to the Court, nor to otherwise professionally compromise his or her role as mediator with other inapplicable roles such as, investigator, evaluator, therapist, or legal advisor. Mediators shall comply with reporting procedures at the conclusion of mediation and shall report to the Court and the Court Mediation Program designee the fact of attendance or nonattendance at all court-ordered mediation sessions, the existence or non-existence of a mediated agreement or mediated partial agreement, and other information as agreed by all parties.

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14. MEDIATION SESSION COSTS THROUGH THE COURT MEDIATION PROGRAM:

- a. Fees; general: The fee for Family and County Court Civil mediations are established by section 44.108, Florida Statutes. The fee for Circuit Civil mediations are provided for by the presiding judge's Mediation Order of Referral. Any portion of an hour will be billed as a full hour. There are no mediation fees for Dependency mediations, nor are there mediation fees for mediation in residential eviction cases, small claims actions, or against parties found to be indigent.
- b. Indigency: A party with an Application for Determination of Civil Indigent Status and a determination of indigency on file with the Clerk of Court as it relates to the case at issue will not be assessed mediation fees pursuant to section 44.108, Florida Statutes. However, fees assessed as a penalty for failure to abide by a Court Order, or as a late cancellation fee or failure to appear fee, do not constitute mediation fees and are not excused by a prior or subsequent determination of indigency.
- c. Family cases; fees: The fee for Family mediation is paid by the parties and is based on the parties' combined income. The fee is \$60.00 per party, per session, if the parties' combined income is less than \$50,000.00 per year. The fee is \$120.00 per party, per session, if the parties' combined income is greater than \$50,000.00 per year and is less than \$100,000.00 per year. A session in a Family mediation is identified as a period of time up to three (3) hours in length. Parties will not be required to pay an additional fee until three (3) consecutive hours of mediation have been completed. A continued mediation requires payment of a new fee. If proof of income is not provided, the mediation fee will be assessed at the \$120.00 per party, per session rate. Parties having a combined income of \$100,000.00 or more per year shall share the cost of mediation equally and, unless a staff mediator is used, shall pay the mediator directly at a rate of \$150.00 per hour.
- d. County Court Civil cases; fees: There is no fee to the parties for court-based mediation of Small Claims Court cases when mediated at the pretrial conference. A Small Claims Court session is identified as a period of time one (1) hour in length. There is a fee of \$60.00 per party, per session, for those County Court Civil cases filed above the Small Claims Court jurisdictional limit. A County Court Civil mediation session is identified as a block of time of up to ninety (90) minutes in length. Parties will not be required to pay an additional fee until ninety (90) consecutive minutes of mediation have been completed. A continued mediation requires payment of a new fee.
- e. Circuit Civil cases; fees: For Circuit Civil cases, parties shall share the cost of mediation equally and shall pay the mediator directly at a rate of \$150.00 per hour. Failure to abide by provisions in the Mediation Order of Referral, or in any other mediation order, may result in penalties.
- f. Dependency cases; fees: Parties will not be assessed a fee for mediation of Dependency cases.

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g. Method of Payment:

(1) Family and County Court Civil: In Family law cases in which the parties have a combined income of less than \$100,000.00 per year, and in County Court Civil cases, prior to the start of the mediation conference, mediation fees shall be paid at the office of the Clerk of Court in the county where the case was filed. The mediation fee may be paid by cash, check, or money order. A Clerk of Court may accept payment by credit card, which may require charging a processing fee. Verification of ability to pay by credit card must be confirmed with the appropriate Clerk of Court, as not all Clerk's offices accept payment in this manner. The Clerk of Court determines if credit card payment over the telephone is acceptable. In Family law cases in which parties have a combined income of \$100,000.00 or more per year, mediation fees shall be paid directly to the mediator immediately upon conclusion of the mediation conference.

(2) Circuit Civil: Mediation fees shall be paid directly to the mediator immediately upon conclusion of the mediation conference.

h. Failure to pay mediation session fee:

(1) Family and County Court Civil: In Family law cases in which the parties have a combined income of less than \$100,000.00 per year, and in County Court Civil cases, if the party or parties fail to pay the mediation fee in advance and the mediation session does not go forward, the nonpaying party or parties shall be termed a "no show," which shall be reported to the Court. The "no show" party or parties will be required to pay a fee equal to the assessed session fee for both parties. If the required fee is not paid, an Order to Show Cause may be issued requiring the nonpaying party or parties to appear before a judicial officer to answer for the nonpayment. The Court may assess additional sanctions against the nonpaying party or parties. This "no show" fee shall be paid prior to start of the next or rescheduled mediation session and shall not be credited as payment for the next or rescheduled mediation session. In Family law cases in which the parties have a combined income of \$100,000.00 or more per year, if the party or parties fail to pay the mediation fee upon conclusion of the mediation, the party or parties shall be required to pay the fee and for the time that the mediator spends enforcing the Court's order. The nonpaying party or parties may be further sanctioned by the Court.

(2) Circuit Civil: If the party or parties fail to pay the mediation fee upon conclusion of the mediation, the party or parties shall be required to pay the fee and for the time that the mediator spends enforcing the Court's order. The nonpaying party or parties may be further sanctioned by the Court.

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i. Failure to appear fee:

(1) Family and County Court Civil: In Family law cases in which the parties have a combined income of less than \$100,000.00 per year, and in County Court Civil cases, if a party or parties fail to appear as ordered by the Mediation Order of Referral and has not cancelled the mediation at least three (3) full business days prior to the mediation date, excluding the date of mediation, and provided cancellation documentation to the Court Mediation Program, the non-appearing party or parties will be required to pay a fee equal to the assessed session fee for both parties. If the required fee is not paid, an Order To Show Cause may be issued requiring the nonpaying party or parties to appear before a judicial officer to answer for the nonpayment. The non-appearing party or parties may be further sanctioned by the Court. A fee paid as a penalty for failure to appear at mediation shall be paid to the Clerk of Court and shall not be applied as payment for any subsequently scheduled mediation. In Family law cases where the parties have a combined income of \$100,000.00 or more per year, if the party or parties fail to appear at mediation and have not cancelled the mediation at least three (3) full business days prior to the mediation date, excluding the date of mediation, and provided cancellation documentation to the Court Mediation program, the non-appearing party or parties shall compensate the mediator by paying a two (2) hour mediation fee. This fee shall not be applied as payment for any subsequently scheduled mediation.

(2) Circuit Civil: If a party fails to appear as ordered by the Mediation Order of Referral and has not cancelled the mediation at least three (3) full business days prior to the mediation date, excluding the date of mediation, and provided cancellation documentation to the Court Mediation Program, the non-appearing party or parties shall compensate the assigned mediator by paying a two (2) hour mediation fee. This fee shall not be applied as payment for any subsequently scheduled mediation.

15. MEDIATOR COMPENSATION:

Regardless of the mediation fee paid by the parties, contract mediators shall be compensated as follows:

- a. Small Claims Court Mediators shall not be compensated for cases addressed at the pretrial conference.
- b. County Court Mediators, when mediating cases above the Small Claims Court jurisdiction, will be compensated at a statutorily set rate of \$50.00 per hour.
- c. Family Law Mediators shall be compensated at a statutorily set rate of \$100.00 per hour.

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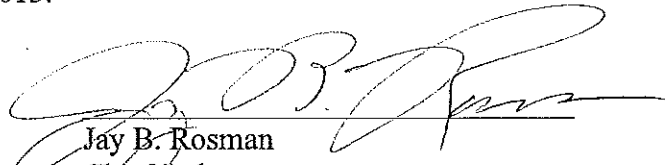
- d. Dependency Mediators shall be compensated at a statutorily set rate of \$100.00 per hour.
- e. Circuit Civil Court Mediators shall be compensated at a rate of \$150.00 per hour.

16. GENERAL PROVISIONS:

- a. This Administrative Order shall remain in effect until amended, modified, or vacated.
- b. To the extent that this Administrative Order may conflict with any law or rule, the law or rule shall control.

DONE AND ORDERED in Chambers at Fort Myers, Lee County, Florida, this

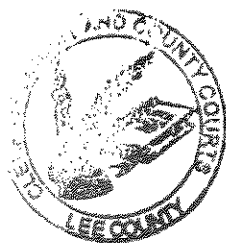
12 day of June, 2013.


 Jay B. Rosman
 Chief Judge

History.- New.

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I certify this document to be a true and correct copy of the record on file in my office,
 Linda Doggett, Clerk Circuit/ County Court, Lee County, FL
 Dated: 6-13-13
 By Am
 Deputy Clerk



STATE OF FLORIDA, COUNTY OF LEE
 FILED FOR RECORD
 This 13 Day of JUNE 2013 Recorded In CIRCUIT
 Book 57 Page 60-70 and Record Verified.
 LINDA DOGGETT By Am
 Clerk Circuit Court Deputy Clerk